

3-23-90

Vol. 55

No. 57

federal register

Friday
March 23, 1990

United States
Government
Printing Office

SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, \$300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Friday
March 23, 1990

Federal Register

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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- WHEN:** March 29, at 9:00 a.m.
- WHERE:** State Office Building Auditorium, Capitol Hill, Salt Lake City, UT.
- RESERVATIONS:** Call the Utah Department of Administrative Services, 801-538-3010.

WASHINGTON, DC

- WHEN:** March 29, at 9:00 a.m.
- WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
- RESERVATIONS:** 202-523-5240.

BOSTON, MA

- WHEN:** April 16, at 9:00 a.m.
- WHERE:** Thomas P. O'Neill Federal Building Auditorium, 10 Causeway Street, Boston, MA.
- RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8129

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 712]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from March 23 through March 29, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 712 (7 CFR part 907) is effective for the period from March 23 through March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989-90 production is 87,500 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared

with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 58 percent of the 1989-90 crop of 87,500 cars will be utilized in fresh domestic channels (51,150 cars), with the remainder being exported fresh (9 percent), processed (31 percent), or designated for other uses (2 percent). This compares with the 1988-89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of that year's crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to

the benefits of regulation to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989-90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the *Federal Register* (54 FR 42966). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The commenters raised several issues relating to equity of marketing opportunity, the shipping schedule, the onset and duration of volume regulations and the like, which opposed volume regulations in general. The Department has completed its analysis of the comments received. The analysis is available from Ms. Pello or the California Marketing Field Office, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487-5901. That analysis is assisting the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on March 20, 1990, in Ventura, California, to consider the current and prospective conditions of supply and demand and recommended, with seven members voting in favor, two opposing, and two abstaining, that 1,850,000 cartons be the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news

reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989-90 marketing policy. This recommended amount is 50,000 cartons below that estimated in the February 6, 1990, tentative shipping schedule. Of the 1,850,000 cartons, 1,628,000 are allotted for District 1 and 222,000 are allotted for District 2. Districts 3 and 4 are not regulated since approximately 86 percent of District 3's crop and nearly all of District 4's crop to date have been utilized and handlers would not be able to utilize their allotments.

During the week ending on March 15, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,949,000 cartons compared with 2,017,000 cartons shipped during the week ending on March 16, 1989. Export shipments totaled 510,000 cartons compared with 356,000 cartons shipped during the week ending on March 16, 1989. Processing and other use accounted for 1,052,000 cartons compared with 1,032,000 cartons shipped during the week ending on March 16, 1989.

Fresh domestic shipments to date this season total 34,700,000 cartons compared with 29,570,000 cartons shipped by this time last season. Export shipments total 5,894,000 cartons compared with 4,765,000 cartons shipped by this time last season. Processing and other use shipments total 11,541,000 cartons compared with 10,976,000 cartons shipped by this time last season.

For the week ending on March 15, 1990, regulated shipments of navel oranges to the fresh domestic market were 1,927,000 cartons on an adjusted allotment of 1,918,000 cartons which resulted in net overshipments of 9,000 cartons. Regulated shipments for the current week (March 16 through March 22, 1990) are estimated at 1,900,000 cartons on an adjusted allotment of 1,924,000 cartons. Thus, undershipments of 24,000 cartons could be carried over into the week ending on March 29, 1990.

The average f.o.b. shipping point price for the week ending on March 15, 1990, was \$6.93 per carton based on a reported sales volume of 1,551,000 cartons compared with last week's average of \$7.35 per carton on a reported sales volume of 1,563,000 cartons. The season average f.o.b. shipping point price to date is \$7.55 per carton. The average f.o.b. shipping point price for

the week ending on March 16, 1989, was \$6.54 per carton; the season average f.o.b. shipping point price at this time last season was \$7.40 per carton.

According to a March 9 crop report issued by the National Agricultural Statistics Service, citrus production as of March 1 is forecast at 10.0 million tons, 1 percent greater than in February but 22 percent below last season. This reduction was due to the severe freezing temperatures in the Florida and Texas citrus belts during late December. Fruit droppage was heavy in most areas of Florida and the Texas harvest has ended. Orange production is up 2 percent from a February 1 forecast but 18 percent below last season. This decline was due mostly to Florida's 30 percent decrease from last season. The severe December freeze in Florida's citrus belt further reduced an already short Florida orange crop. The increase since February reflects better than expected salvage operations in Florida.

The Department's Market News Service reported that, as of March 20, overall demand for California-Arizona navel oranges was fairly good for sizes 48-72s (both first grade and choice) and moderate for all other grades and sizes; the market for size 56s (first grade) was slightly higher while the market for all other grades and sizes was "about steady." At the meeting, most Committee members characterized demand as fairly poor and the market as depressed. However, one Committee member reported that the market appeared to be fairly good. In addition, inventories of fruit were reported to be building. Committee members and observers discussed different levels of allotment as well as open movement. Two Committee members favored open movement while the majority of Committee members favored continuation of volume regulation at this time to maintain market stability.

The 1988-89 season average fresh equivalent on-tree price for California-Arizona navel oranges was \$3.86 per carton, 65 percent of the season average parity equivalent price of \$5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1989-90 season average fresh on-tree price is estimated to be between \$4.50 and \$4.70 per carton. This range is equivalent to 71 to 74 percent of the projected season average fresh on-tree parity equivalent price of \$6.33 per carton. Thus, the 1989-90 season average on-tree price is not expected to exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from March 23 through March 29, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engaged in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until March 20, 1990, and this action needs to be effective for the regulatory week which begins on March 23, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.1012 is added to read as follows:

Note.—This section will not appear in the annual Code of Federal Regulations.

§ 907.1012 Navel Orange Regulation 712.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from March 23 through March 29, 1990, is established as follows:

- (a) District 1: 1,628,000 cartons;
- (b) District 2: 222,000 cartons;
- (c) District 3: unlimited cartons;
- (d) District 4: unlimited cartons.

Dated: March 21, 1990.

Robert C. Keeney,

Fruit and Vegetable Division.

[FR Doc. 90-6807 Filed 3-22-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 710]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 710 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period from March 25, 1990, through March 31, 1990. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 710 (7 CFR part 910) is effective for the period from March 25, 1990, through March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act,

and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on March 20, 1990, in Ventura, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is excellent.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have

been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note.—This section will not appear in the Code of Federal Regulations.

2. Section 910.710 is added to read as follows:

§ 910.710 Lemon Regulation 710.

The quantity of lemons grown in California and Arizona which may be handled during the period from March 25, 1990, through March 31, 1990, as is established at 340,000 cartons.

Dated: March 21, 1990.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 90-6806 Filed 3-22-90, 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 16

[Docket No. RM87-33-003; Order No. 513-C]

Hydroelectric Relicensing Regulations Under the Federal Power Act; Corrections

Issued March 16, 1990.

AGENCY: Federal Energy Regulatory
Commission.

ACTION: Final rule; correction notice.

SUMMARY: On May 17, 1989, the Federal Energy Regulatory Commission (Commission) issued a final rule establishing relicensing procedures for processing applications for licenses to operate existing hydroelectric facilities when their current licenses are approaching expiration (54 FR 23,756 (June 2, 1989)). Among other things, the Commission redesignated §§ 16.15 and 16.16 as §§ 16.6 and 16.7 in the final rule. The Commission, however, did not correct a cross reference that appears in

paragraph (b) of the newly redesignated § 16.7.

The Commission, therefore, in § 16.7, paragraph (b), is removing the word "§ 16.15(b)" and inserting the word "§ 16.6(b)" in its place.

EFFECTIVE DATE: This correction is effective March 16, 1990.

FOR FURTHER INFORMATION CONTACT:

Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Hearing Room A at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this (final rule/order on rehearing, etc.) will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Hearing Room A, 825 North Capitol Street NE., Washington, DC 20426.

The Federal Energy Regulatory Commission (Commission) is correcting a cross reference in § 16.7(b) of its regulations.

On May 17, 1989, the Commission issued a final rule establishing relicensing procedures for processing applications for licenses to operate existing hydroelectric facilities when their current licenses are approaching expiration (54 FR 23,756 (June 2, 1989)). Among other things, the Commission redesignated §§ 16.15 and 16.16 as §§ 16.6 and 16.7 in the final rule. The Commission, however, did not correct a cross reference that appears in paragraph (b) of the newly redesignated § 16.7.

§ 16.7 [Corrected]

Therefore, in § 16.7, paragraph (b), the word "§ 16.15(b)" is removed and the word "§ 16.6(b)" is inserted in its place.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6617 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09 90-06]

Drawbridge Operation Regulations; Sandusky Bay, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule; revocation.

SUMMARY: This amendment revokes the regulations for the Ohio Route 269, drawbridge, mile 8.2, because the bridge has been removed. Notice and public procedure have been omitted from this action due to the removal of the bridge concerned.

EFFECTIVE DATE: This rule becomes effective on April 23, 1990.

FOR FURTHER INFORMATION CONTACT:

Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant economic impact on a substantial number of small entities.

Drafting Information: The drafters of this rule are Fred H. Mieser, project officer, and Lieutenant Commander M. Eric Reeves, U.S. Coast Guard project attorney.

Federalism: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.853 [Removed]

2. Section 117.853(b) is removed.

Dated: March 13, 1990.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

[FR Doc. 90-6657 Filed 3-22-90; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301-2, 301-3, 301-10, 301-15, and 302-1

[FTR Amendment 9]

RIN 3090-AD47

Federal Travel Regulation; Travel Management Program

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This rule permanently codifies, as part 301-15—Travel Management Programs, provisions formerly contained in the appendix to subtitle F—Temporary Regulations. This rule also codifies provisions formerly promulgated as Temporary Regulations A-32 and A-34 under the Federal Property Management Regulations (FPMR) system. The amendment will consolidate all travel-related regulations in a single subtitle of the Code of Federal Regulations for ease of use. Provisions formerly contained in the temporary regulations have been reformatted and renumbered with some editorial changes. There are no substantive changes to allowances or entitlements in this final rule.

EFFECTIVE DATE: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Travel Management Division, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: Subpart A of part 301-15 (formerly FTR Temp.

Reg. 1) prescribes policies and procedures for the use of commercial travel agents to supply transportation and travel services for Federal employees. Subpart B (formerly FTR Temp. Reg. 2) prescribes policies and procedures governing the use of U.S. certificated air carriers and rail carriers which are under contract with GSA to furnish Federal employees with scheduled airline/rail service at reduced fares. Subpart C (formerly FTR Temp. Reg. 3) prescribes policies and procedures governing the use of GSA's travel and transportation expense payment system. Provisions authorizing payment of limited first duty station relocation allowances to eligible members of the Presidential Transition Team (formerly FPMR Temp. Reg. A-32) are incorporated in part 302-1—Applicability, General Rules, and Eligibility Conditions. Provisions which limit travel advances to manage cash more effectively (formerly FPMR Temp. Reg. A-34) are incorporated in part 301-10—Sources of Funds.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects

41 CFR Parts 301-2, 301-3, 301-10, and 301-15

Government employees, Travel, Travel allowances, Travel and transportation expenses.

41 CFR Part 302-1

Government employees, Transfers, Relocation allowances and entitlements.

For the reasons set out in the preamble, 41 CFR parts 301-2, 301-3, 301-10, and 302-1 are amended, part 301-15 is added, and the appendix to subtitle F is removed as set forth below.

PART 301-2—TRANSPORTATION ALLOWABLE

1. The authority citation for part 301-2 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301-2.2 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 301-2.2 Methods of transportation.

(d) * * *

(1) * * *

(ii) *Selecting the most advantageous method of common carrier transportation—(A) Contract air service.* The use of discount fares offered by contract air carriers between certain cities (city-pairs) is considered advantageous to the Government and is mandatory for authorized air travel between those city-pairs. (See § 301-3.4(b)(1)(ii) and part 301-15, subpart B for policy and specific guidelines and exceptions.)

(B) *Noncontract air service.* The use of noncontract air service may be authorized or approved only when justified under the conditions provided in part 301-15, subpart B. Advance authorization and the justification for the use of noncontract air service shall be shown on the travel order or other form of travel authorization before the actual travel begins, unless extenuating circumstances or emergency situations make advance authorization impossible. In those events, the employee shall obtain written approval from the appropriate agency official at the earliest possible time after completing the travel. The approval and justification therefor shall be stated on or attached to the travel voucher.

(C) *Rail or bus service.* Rail or bus service may be used when determined by the agency to be advantageous to the Government, cost, energy, and other factors considered, and when compatible with the requirements of the official travel. The use of contract or other discount fares offered to the Government by rail or bus carriers between selected cities (city-pairs) is considered advantageous. Whenever these discount fares are offered and the accompanying service will fulfill mission requirements, they should be used to the maximum extent possible. See part 301-15, subpart B for policy and specific guidelines for use of contract rail service. See also §§ 301-3.3(b) and 301-3.4(b) for authorized service and accommodations and reduced fares.

PART 301-3—USE OF COMMERCIAL TRANSPORTATION

3. The authority citation for part 301-3 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

4. Section 301-3.4 is amended by revising paragraphs (b)(1)(ii) and (c) to read as follows:

§ 301-3.4 Special fares.

(b) * * *

(1) * * *

(ii) For the use of contract air carriers for official travel between certain cities/airports, all agencies, except DOD, shall follow the policies, procedures, and requirements provided in part 301-15, subpart B. DOD must follow procedures established in the Military Traffic Management Regulation, AR 55-355/NAVSUPINST 4600.70/AFR 75-2/MCO P4600.14B/DLAR 4500.3.

(c) *Unequal fares available.* Except as provided in part 301-15, subpart B, when common carriers furnish the same method of travel at different fares between the same points for the same type of accommodations, the lowest cost service shall be used unless use of a higher cost service is administratively determined to be more advantageous to the Government. (See § 301-2.2(c).)

PART 301-10—SOURCES OF FUNDS

5. The authority citation for part 301-10 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

6. Section 301-10.1, including the section heading, is revised to read as follows:

§ 301-10.1 General policy.

(a) *Minimizing cash requirements.* As a general policy, employees traveling on official business are responsible for meeting their current travel expenses. However, Federal employees should not have to pay official travel expenses entirely from personal funds unless the employee has elected not to use alternative resources made available by the Government; i.e., contractor-issued charge cards or travelers checks. To alleviate the need for employees to use personal funds, agencies may issue travel advances for certain expenses as authorized by § 301-10.3. Agencies and travelers shall take all reasonable steps to minimize the cash burden on both the agency and the traveler. These steps shall include, but not be limited to, using Government contractor-issued charge cards. Where the use of Government contractor-issued charge cards is impractical for procuring common carrier transportation, agencies shall purchase required transportation tickets for employees using Government

Transportation Requests (GTR's) as provided in § 301-10.2, or centrally billed accounts as provided in § 301-15.45.

(b) *Managing financial resources.* To manage Federal financial resources more effectively for travel expense purposes, agencies shall:

(1) Hold to a minimum the amounts of cash advanced for travel purposes as provided in § 301-10.3;

(2) Follow-up with travelers to assure that vouchers are submitted within established timeframes as provided in § 301-11.4(a); and

(3) Process travel vouchers promptly to recover any excess travel advances or to provide payment to employees as provided in § 301-10.3(e). Agencies must establish internal policies and procedures to ensure that travel vouchers are paid within 25 working days after the end of each trip or travel period for which a voucher is filed.

(c) *Government contractor-issued charge cards.* Agencies shall offer Government contractor-issued charge cards to all employees who are expected to travel at least twice a year (frequent travelers), consistent with each agency's internal travel regulations. Upon request, agencies shall issue the card to any employee authorized to perform official travel. Part 301-15, subpart C contains rules and procedures governing the issuance of Government charge cards. Travelers issued charge cards are encouraged to use them to pay for official travel expenses to the maximum extent possible.

7. Section 301-10.2 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 301-10.2 Procurement of common carrier transportation.

(b) * * *

(2) * * *

(ii) *Use of individual Government contractor-issued charge card for procurement of transportation exceeding \$100.* Cash payment of passenger transportation services in excess of \$100 is authorized when a participating agency or its employees use a charge card issued by a contractor under contract with the General Services Administration for official travel. Use of charge or credit cards held by the employee for personal use and issued by any other credit company is not authorized under this exception. (See part 301-15, subpart C governing the Government's charge card program.)

8. Section 301-10.3 is revised to read as follows:

§ 301-10.3 Advance of funds.

(a) *Authority.* The head of each agency or his/her designated representative may provide, through proper disbursing officers, to persons entitled to per diem (for subsistence expenses) or mileage allowances, an advance of travel funds in an amount deemed advisable within the criteria stated in paragraphs (b) and (c) of this section, considering the character and probable duration of the travel to be performed. Agencies shall issue advances in the form of travelers checks when that method is determined to be in the best interest of the Government.

(b) *Limitation.* Except as provided in paragraph (c) of this section, agencies shall limit the advance of travel funds to those estimated expenses that a traveler is expected to incur in connection with authorized travel (including travel incident to a permanent change of station) which normally would be paid using cash ("cash transaction expenses" as defined in paragraph (b)(1) of this section). This limitation applies to advances issued for travel under single trip as well as open travel authorizations. However, for travel covered by an open travel authorization, advances shall be limited to the estimated cash transaction expenses for no more than a 45-day period.

(1) *Cash transaction expenses.* Cash transaction expenses are those travel expenses that as a general rule cannot be charged and must, therefore, be paid using cash, personal checks, or travelers checks. It is assumed that travelers normally will be able to use a Government contractor-issued charge card to charge major expenses such as common carrier transportation fares, lodging costs, and rental of automobiles and airplanes. Therefore, expenses which will be considered cash transaction expenses are:

(i) Meals and incidental expenses (M&IE) covered by the per diem rate or actual subsistence expense allowance;

(ii) Miscellaneous transportation expenses such as local transit system fares; taxi fares; parking fees; ferry fees; bridge, road, and tunnel fees; and airplane parking, landing, and tiedown fees;

(iii) Gasoline and other variable expenses covered by the mileage allowance for advantageous use of a privately owned vehicle for official business; and

(iv) Other authorized miscellaneous expenses which cannot be charged using a charge card and for which a cost reasonably can be estimated prior to travel.

(2) *Allowable amount for meals and incidental expenses (M&IE).* For travel within the continental United States (CONUS), the amount advanced for meals and incidental expenses shall not exceed the prescribed M&IE rate or other amount authorized by the agency under parts 301-7 or 301-8, as appropriate. For travel outside CONUS, the amount advanced for M&IE shall not exceed 50 percent of the per diem rate or actual expense rate authorized under parts 301-7 or 301-8, respectively.

(c) *Exceptions to travel advance limitation—(1) Authorized exceptions.* The limitation provided in paragraph (b) of this section does not apply to the following change of official station expenses: temporary quarters subsistence, transportation and temporary storage of household goods or employee's automobile, or transportation of mobile homes.

(2) *Agency discretion.* Agencies may, under the limited circumstances described in paragraphs (c)(2) (i) through (iii) of this section, increase the amount of the travel advance provided to the traveler.

(i) *Use of charge card precluded.* Travel circumstances are expected to preclude the use of a Government contractor-issued charge card to purchase transportation, lodging, car rental, or other travel expenses that normally would be chargeable.

(ii) *Charge card issuance denied.* The agency determines that in certain situations an employee or group of employees should not be issued a Government contractor-issued charge card. The basis for this determination must be documented in the agency's internal travel regulations and might include infrequent travelers or travel circumstances where use of a charge card is nearly always impractical.

(iii) *Official change of station.* The agency determines that the use of Government contractor-issued charge cards is not feasible for en route travel and househunting trip cash transaction expenses in connection with employees transferring between official stations, particularly those transferring between agencies.

(3) *Amount allowed.* Travel advances under this exception shall not exceed 80 percent of the estimated additional cash expenses permitted under either paragraph (c) (1) or (2) of this section and authorized on the travel authorization unless a determination is made that the 80 percent limitation will result in a financial hardship on the employee. In cases of financial hardship, the agency may advance up to 100 percent of these estimated expenses for an individual trip, or for an open travel

authorization not to exceed a 45-day period.

(4) *Exception precluded.* This exception authority may not be exercised in situations where the employee has elected not to use alternative funding resources made available by the Government; i.e., Government contractor-issued charge cards or travelers checks. This exception authority may not be exercised for travelers whose Government charge cards have been suspended or revoked because of delinquent payments.

(d) *Funds chargeable.* Advances to travelers shall be chargeable to the appropriation or other funds available for the payment of the traveler's expenses.

(e) *Control and recovery of advances.* Agencies shall establish internal financial controls for assuring that travelers with outstanding travel advances are notified of any delinquencies in filing vouchers and repaying outstanding advance balances, and that travelers are promptly paid amounts owed to them by the agency. These controls should include procedures for reviewing outstanding travel advances and unpaid travel vouchers prior to an employee's separation, and for settling all outstanding amounts.

(1) *Deduction from vouchers.* It shall be the responsibility of the head of each agency or his/her designee to ensure that the amount previously advanced is deducted from the total expenses allowed or that it is otherwise recovered. In instances where the traveler is in a continuous travel status, or where periodic reimbursement vouchers are submitted on an individual trip authorization, the full amount of travel expenses allowed may be reimbursed to that traveler without any deduction of his/her advance until such time as the final voucher is submitted. If the amount advanced is less than the amount of the voucher on which the advance is deducted, the traveler shall be paid the net amount. In the event the advance exceeds the reimbursable amount, the traveler shall immediately refund the excess.

(2) *Direct refunds.* In the event of cancellation or indefinite postponement of authorized travel, the traveler shall promptly notify appropriate agency officials of such event and refund any monies advanced to him/her in connection with the authorized travel. In the event the traveler does not promptly refund the money, the head of the agency or his/her designee shall take immediate steps to secure the refund of any advance that may have been made.

(3) *Other means of recovery.* Outstanding advances which have not been recovered by deduction from reimbursement vouchers or voluntary refunds by the traveler shall be promptly recovered by a setoff of salary due or retirement credit or otherwise from the person to whom it was advanced, or his/her estate, by deduction from any amount due from the United States, or by any other legal method of recovery that may be necessary. Salary or other amounts due shall be considered before the retirement credit. In view of these protections, which are specifically included in the law, travelers shall not be required to furnish bonds in order to obtain travel advances. (See 31 U.S.C. 9302.)

(f) *Accounting for advances.* Accounting for cash advances for travel purposes, recovery, and reimbursements shall be in accordance with procedures prescribed by the General Accounting Office (see General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures).

9. Chapter 301 is amended by adding part 301-15 to read as follows:

PART 301-15—TRAVEL MANAGEMENT PROGRAMS

Subpart A—Use of Travel Agents and Travel Management Centers (TMC'S) by Federal Executive Agencies

Sec.

- 301-15.1 Scope of subpart.
- 301-15.2 Applicability.
- 301-15.3 Authority to use travel agents.
- 301-15.4 Establishment of TMC'S.
- 301-15.5 TMC responsibilities.
- 301-15.6 GSA responsibilities.
- 301-15.7 Agency responsibilities.
- 301-15.8 Employee responsibilities.

Subpart B—Use of Contract Airline/Rail Passenger Service Between Selected Cities/Airports

- 301-15.20 Scope of subpart.
- 301-15.21 Applicability.
- 301-15.22 Alternate use of noncontract rail or bus service.
- 301-15.23 Responsibility of awardees.
- 301-15.24 Procedures for obtaining service.
- 301-15.25 Use of travel management centers (TMC's).
- 301-15.26 Progressive airline awards for the same city/airport pair.
- 301-15.27 Use of noncontract carriers for listed city/airport pairs.
- 301-15.28 Traveler liability.

Subpart C—Travel and Transportation Expense Payment System: Contractor-Issued Charge Cards, Centrally Billed Accounts, and Travelers Checks

- 301-15.40 Scope of subpart.
- 301-15.41 Applicability.

- 301-15.42 Definitions.
- 301-15.43 Agency participation.
- 301-15.44 Individual employee charge cards.
- 301-15.45 Centrally billed accounts.
- 301-15.46 Travelers checks.
- 301-15.47 Additional agency guidance and information.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart A—Use of Travel Agents and Travel Management Centers (TMC's) by Federal Executive Agencies

§ 301-15.1 Scope of subpart.

(a) This subpart prescribes policies and procedures for the use of commercial travel agents to supply transportation and travel services for Federal employees or officers on official travel. It also provides for the establishment, control, and administration of travel management centers (TMC's) supplying these services to Federal agencies.

(b) A TMC is a commercial travel office operated by a travel agent under contract with the General Services Administration (GSA). The Federal Travel Directory (FTD), published monthly by GSA and the Department of Defense (DOD), contains an up-to-date listing of TMC's. Federal agencies and employees should order copies of the FTD through their appropriate headquarters administrative offices. The FTD also is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The publication stock number is 722-006-00000-3.

§ 301-15.2 Applicability.

This subpart applies to all executive agencies as defined under section 3 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472).

§ 301-15.3 Authority to use travel agents.

(a) On May 25, 1984, the General Accounting Office removed the previous restrictions on the use of travel agents by Federal agencies.

(b) The services of a travel agent may not be used by executive agencies except:

- (1) Through a TMC under contract to GSA;
- (2) Through delegation of authority, obtained from GSA where warranted; or
- (3) By exception as provided in § 301-3.4(b).

§ 301-15.4 Establishment of TMC's.

(a) GSA contracts for TMC's in locations where the volume of travel justifies the need for such services. Generally, GSA will secure services through local travel agents. In the

continental United States, areas with dispersed Federal employees or with a limited number of travel agents may be served by a TMC designated to provide Statewide service.

(b) An agency's request to participate in the TMC program should be directed to the GSA Federal Supply Service Bureau, Traffic and Travel Services Zone Office, which has jurisdiction over the State where travel management services are required. Zone office locations and contacts are listed in the FTD.

(c) GSA requires the following information for each agency location to be served:

- (1) The name and address of each agency location and the name and telephone number of an agency representative designated to act as liaison;
- (2) A per location estimate of official airline travel (number of tickets and total dollar cost) based on the prior year's travel records, and an estimate of the percentage of international travel, if any;
- (3) The number of Federal agency employees per location; and
- (4) Any special travel requirements, such as a high percentage of complex international travel.

§ 301-15.5 TMC responsibilities.

Under the terms of a contract, a TMC is required to:

- (a) Comply with this subtitle and similar regulations as applicable, such as The Joint Federal Travel Regulations (JFTR), Volume 1 and the Uniform State/AID/USIA Foreign Service Travel Regulations (6 FAM 100);
- (b) Comply with all appropriate Federal travel programs, such as the GSA scheduled passenger transportation services contracts (see subpart B of this part), the GSA travel expense payment system (both individual and centrally billed accounts (see subpart C of this part)), and the Fly-America Act (49 U.S.C. App. 1517);
- (c) Provide a full range of services to assist the traveler or Federal agency (including airline, bus, steamship, or train reservations and ticketing; hotel and motel reservations; commercial auto rentals; assistance with visas and passports; and arranging conferences and seminars);
- (d) Deliver travel documents to designated control points for agencies' convenience;
- (e) Respond quickly when problems arise regarding changes in a traveler's itinerary; and
- (f) Provide appropriate management information reports which include all billing activity, summarize travel data,

and confirm adherence to Federal travel policies.

§ 301-15.6 GSA responsibilities.

(a) The appropriate GSA Traffic and Travel Services Zone Office will promptly acknowledge receipt of each agency's request to participate in the TMC program. If further details are needed, meetings between GSA and agency liaison personnel will be arranged.

(b) GSA will handle all required procurement processes, including solicitation development, selection of the successful bidder, and award and administration of the contract.

(c) A GSA project coordinator will be appointed to act as the primary liaison between the requesting agency and the designated TMC.

(d) GSA will assist agencies in developing a memorandum of understanding with the designated TMC.

§ 301-15.7 Agency responsibilities.

(a) Agencies may be requested to participate with GSA on a technical review panel to evaluate proposals from travel agents in the selection and evaluation process.

(b) Agencies are required to comply with the terms of the GSA contract and may not make separate contractual agreements with TMC's.

(c) It is the responsibility of the agency to prepare and finalize a memorandum of understanding (MOU) between the agency and the TMC contractor. The MOU should outline specific requirements and billing/refund procedures which must be agreed to by both the contractor and GSA. The MOU should also include the following information for each agency location where the service will be performed:

- (1) The names and telephone numbers of agency liaison personnel designated to work locally with the TMC contractor and GSA project coordinator;
- (2) Specific ticket delivery locations or control points, including names and telephone numbers of personnel authorized to accept tickets; and
- (3) Any special or unusual agency travel policies or travel-related requirements.

(d) Before TMC service is initiated, a participating agency must establish, as a minimum, certain internal procedures. The agency shall inform subordinate offices of these procedures. Since many agencies have numerous field offices participating in the program, it is recommended that agencies standardize the following:

- (1) Requirements for certification of official travel (for example, some

agencies require that a copy of the travel authorization be exchanged for each ticket received at the point of delivery, while other agencies provide travelers with an accounting code to use when ordering tickets; and

(2) Billing and payment procedures, including ticket refunds (for example, an agency with a national or centralized finance office may require field offices to return unused tickets to that office which will, in turn, make a request to the TMC for ticket refunds, rather than have field offices return tickets directly).

(e) Transactions with a TMC are comparable to those made directly with a carrier. Therefore, transactions between the agency and the TMC are governed by applicable audit regulations. For example, when an agency uses Government Transportation Requests (GTR's), they shall be made out in the name of the TMC, not the carrier. Similarly, unused tickets purchased from the TMC shall be returned directly to the TMC for refunds.

(f) Agencies will be requested to participate on a local oversight committee to review TMC performance, coordinate agency and TMC procedures, and provide GSA with requested information. Local oversight committee participation may be on a rotating or permanent basis.

(g) Agencies shall remain responsible for employee compliance with this subtitle, including mandatory use of the contract air/rail carriers program (see subpart B of this part) and restrictions on premium-class air travel (see § 301-3.3(d)).

(h) Agencies shall comply with the Prompt Payment Act, as amended (31 U.S.C. 3901), and make timely payments to the TMC in accordance with the Act and Office of Management and Budget guidelines.

§ 301-15.8 Employee responsibilities.

Employees are not authorized to use a TMC unless their agency participates in GSA's TMC program and has established internal procedures for the use of the designated TMC (see § 301-15.7(b)).

Subpart B—Use of Contract Airline/Rail Passenger Service Between Selected Cities/Airports

§ 301-15.20 Scope of subpart.

(a) This subpart prescribes policies and procedures governing the use of U.S. certificated air carriers and rail carriers which are under contract with the General Services Administration (GSA) to furnish Federal employees and other persons authorized to travel at Government expense with scheduled

airline/rail passenger service between selected U.S. cities/airports and between selected U.S. and international cities/airports at reduced fares. Carriers not under contract with GSA (referred to in this subpart as noncontract carriers) may be used between the selected cities/airports under conditions specified in § 301-15.27.

(b) The carriers under contract (referred to in this subpart as awardee[s]), the contract fares, and the selected city and airport pairs to which the contract fares apply are published in the Federal Travel Directory (FTD), a monthly publication to be used in conjunction with this subpart. Federal agencies and employees should order copies of the FTD through their appropriate headquarters administrative offices. The FTD also is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The publication stock number is 722-006-00000-3.

§ 301-15.21 Applicability.

(a) This subpart is mandatory for all executive agencies (except the Department of Defense (DOD)) and other Federal agencies subject to the authority of the Administrator of General Services under section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481) and 5 U.S.C. 5701 *et seq.* and 5721 *et seq.* (Uniformed members and civilian employees of DOD are subject to the procedures established in the Defense Traffic Management Regulation AR 55-355/NAVSUPINST 4600.70/AFR 75-2/MCO P4600.14B/DLAR 4500.3.)

(b) The following persons are exempt from mandatory use of this subpart; however, they are authorized to obtain services under this subpart at the option of the awardees when seating space is available.

- (1) Uniformed members of the U.S. Coast Guard;
- (2) Members and employees of the U.S. Congress;
- (3) Employees of the judicial branch of the Government;
- (4) Employees of the U.S. Postal Service;
- (5) Foreign service officers;
- (6) Employees of any agency having independent statutory authority to prescribe travel allowances and who are not subject to the provisions of 5 U.S.C. 5701 through 5709; and
- (7) Contractors performing work under cost-reimbursable contracts or other eligible contracts as defined in 48 CFR part 51, including (but not limited to):

(i) Contractors working under cost-reimbursable contracts or other types of

contracts involving direct travel costs to the Government; or

(ii) Contractors working for the Government at specific sites under nonprofit arrangements with the applicable contracting agency, and which are funded at such sites through Congressional appropriations (e.g., Government-owned, contractor operated (GOCO), federally funded research and development (FFRDC), or management and operating (M&O) contracts).

Note: Each contracting agency is responsible for identifying contractor eligibility and authorization for GSA contract fares.

§ 301-15.22 Alternate use of noncontract rail or bus service.

Notwithstanding the provisions of this subpart, noncontract rail or bus service may be used when the agency determines that these modes are advantageous to the Government (cost, energy, and other factors considered) and compatible with the requirements of the travel mission. (See § 301-2.2(d)(1)(ii)(C).)

§ 301-15.23 Responsibility of awardees.

(a) Awardees are not required to furnish services if, at the time of the request for service, the scheduled carrier's conveyance is fully loaded; nor are awardees required to furnish any additional aircraft or railcars to satisfy the transportation requirement. Awardees will provide the official Government traveler with services that are the same as those provided to their commercial passengers in scheduled jet or rail coach service, subject to the rules and procedures published in tariffs filed with the Airline Tariff Publishing Company or contained in the awardees' contracts of carriage.

(b) In describing unrestricted contract fares, awardees will use the designator "YCA." Awardees will describe restricted contract fares by using a three-letter designator in which the last two characters will always consist of the letters "CA"; e.g., "QCA".

(c) Awardees will issue prepaid tickets at no charge to Federal agencies when such tickets are requested by the Government in accordance with the provisions of § 301-15.24. This service, commonly known as prepaid ticket advice (PTA), includes notification between awardees' offices by electronic means or mail that a requestor in one location has purchased and requested issuance of prepaid transportation tickets to a person in another location. Generally, this service is used for Federal travelers who are located in

remote areas or at long distances from airports or rail terminals and do not have immediate access to a ticket issuing facility. PTA service should not be used except where exceptional circumstances require use of such service.

§ 301-15.24 Procedures for obtaining service.

(a) Except as provided in paragraphs (b), (c), and (h) of this section, contract airline/rail passenger service shall be ordered by the issuance of a U.S. Government Transportation Request (GTR) (Standard Form 1169), either directly to awardees or indirectly to a travel management center (TMC) established by GSA as provided in subpart A of this part. (See § 301-15.25 on the use of TMC's.)

(b) Agencies and departments participating in GSA's travel and transportation expense payment system are authorized to use GSA contractor-issued charge cards to the extent provided in subpart C of this part. The charge cards may be presented to awardees, TMC's, airline and AMTRAK ticket counters, or agency travel officers, as appropriate and in accordance with agency policies and procedures implementing the charge card program.

(c) In limited circumstances when a traveler uses cash to procure service under 41 CFR 101-41.203-2, the traveler shall be prepared to authenticate the trip as official travel. When cash is used, the awardees listed in the FTD have the option of furnishing or not furnishing services at the contract fare. If only one contract is awarded for a city/airport pair and the awardee does not provide a contract fare with the use of cash, the traveler shall procure service from the awardee or a noncontract carrier offering the lowest fare. If more than one carrier has been awarded a contract for a city/airport pair, the traveler shall observe the order of awardee succession in selecting an awardee which provides a contract fare with the use of cash. If none of the awardees provides a contract fare with the use of cash, the traveler shall procure service from an awardee or noncontract carrier offering the lowest fare. Cash or personal credit cards may not be used to circumvent the Government's contracts.

(d) When a reservation for contract service is requested, the fare basis shall be identified as "YCA" (unrestricted) or "—CA" (restricted), as appropriate, and the awardee's ticket agent shall be instructed to apply the appropriate fare basis and contract fare. Agencies using teletype ticketing equipment shall examine airline tickets to determine if

the tickets contain the correct fare or whether they should be canceled and new tickets issued. Tickets picked up at the airline ticket office shall be verified to ensure that the proper fare is shown on the ticket.

(e) Contract fares apply only for the city/airport pairs named in the FTD, and are not applicable to or from intermediate points. However, the contract fares are applicable in conjunction with other published fares or other contract fares. Contract fares shall not be used for personal travel taken in connection with official travel.

(f) When a city/airport pair published in the FTD indicates that only one contract is awarded and the awardee subsequently offers a fare lower than its contract fare for the same service, the ordering agency may elect to use the lower fare. Promotional, restricted, and those special fares offered by the awardee and applicable only to Government employees on official travel (commonly known as status fares) may be used if the traveler can meet the qualifying restrictions to obtain such fares.

(g) When the FTD indicates that separate contract fares apply for specific airports in selected cities served by more than one airport, travelers may (without further justification) use the airport which best suits their needs.

(h) Eligible contractor employees (as defined in § 301-15.21(b)(7)), traveling in performance of a Government contract and with proper identification from the contracting agency, are authorized to obtain contract fares if the awardee agrees to the arrangement. Awardees may, at their option, require Government contractor employees to furnish a GTR or contract number for endorsement purposes in conjunction with payment by GTR, cash, or personal credit card. The FTD identifies those awardees which have agreed to furnish transportation services at the GSA contract fare to eligible Government contractors.

§ 301-15.25 Use of travel management centers (TMC's).

(a) TMC's are commercial offices operated by travel agents under contract with GSA. TMC's are responsible for providing and arranging all travel services required by the participating agencies. The FTD contains an up-to-date listing of TMC's.

(b) When GTR's are used, the TMC's are assigned GTR numbers by each participating agency and these GTR numbers shall be shown on all transportation tickets issued.

(c) When GSA contractor-issued charge cards or centrally billed accounts

are used, travel management services will be furnished as provided in subpart C of this part.

§ 301-15.26 Progressive airline awards for the same city/airport pair.

When progressive awards are made for the same city/airport pair, the awardees are listed in the FTD in priority order from the awardee (primary) offering the lower YCA fare to the awardee (secondary) offering the next higher YCA fare. Except as otherwise provided in this section, agencies shall obtain contract services in the order of awardee priority specified in the FTD.

(a) Where the awardee offers both a YCA fare and a restricted fare (e.g., QCA) for the same city/airport pair, the FTD lists both fares and describes the qualifying conditions for obtaining the restricted fare. The availability of a lower restricted fare by a secondary awardee does not remove the Government's obligation to request service from the primary awardee. Agencies may use the secondary awardee's restricted fare only if the exceptions noted in paragraph (b) of this section indicate that the use of the secondary awardee is justified. For example, if the primary awardee listed in the FTD offers a YCA fare of \$90 and the secondary awardee offers a YCA fare of \$100 and a QCA fare of \$80, the QCA fare of \$80 may be used only if the primary awardee with the lower YCA fare of \$90 is displaced for reasons noted in paragraph (b) of this section.

(b) The secondary awardee may be used when:

(1) Seating space or the scheduled flight of the primary awardee is not available in time to accomplish the purpose of the travel, or the scheduled flight would require the traveler to incur unnecessary overnight lodging expense;

(2) The primary awardee's flight schedule for the travel involved is inconsistent with the Government's policy of scheduling travel to the maximum extent practicable during normal working hours (see 5 CFR 610.123); or

(3) Based on a cost comparison, the primary awardee's fare, when added to such factors as ground transportation, lost productive time, allowable overtime, and additional overnight lodging expense, would result in higher costs to the Government than the costs resulting from the use of the secondary awardee.

(c) When an awardee offers a commercial fare lower than its Government contract fare, the ordering agency may use the lower fare provided

the qualifications for obtaining the lower fare are compatible with the agency's travel requirements and provided a cost comparison of total costs prescribed in paragraph (b)(3) of this section justifies a change in the order of award succession. By offering the general public a fare lower than its contract fare, the awardee assumes the status of a noncontract carrier and the provisions of § 301-15.27 apply.

§ 301-15.27 Use of noncontract carriers for listed city/airport pairs.

(a) Heads of agencies are authorized to approve the use of noncontract carriers for city/airport pairs listed in the FTD when their use is justified under the conditions specified in paragraph (b) of this section. This authority may be delegated provided appropriate guidelines in the form of regulations or other written instructions are furnished the designee. Redesignations of authority shall be limited. Delegation and redelegation of authority shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances requiring the use of noncontract carriers. Justification for the use of noncontract carriers will be authorized on individual travel orders (if known before travel begins) or approved on vouchers (if not known before travel begins).

(b) Use of noncontract carriers for city/airport pairs listed in the FTD is justified when:

(1) Seating space or the scheduled service of the awardee is not available in time to accomplish the purpose of the travel, or the scheduled service would require the traveler to incur overnight lodging expense;

(2) The awardee's schedule for the travel involved is inconsistent with the Government's policy of scheduling travel to the maximum extent practicable during normal working hours; or

(3) Based on a cost comparison (see paragraph (c) of this section).

(i) A restricted or unrestricted coach fare available to the general public is lower than the contract fare or other fare offered by the awardee, all other cost factors being equal; or

(ii) Use of a noncontract coach fare available to the general public would, when added to such factors as ground transportation, lost productive time, allowable overtime, and additional overnight lodging expense, result in lower costs to the Government than the costs that would accrue if comparable cost factors were added to the contract fare.

(c) When making cost comparisons,

(1) Discount fares such as YDG, MDG, or other fares restricted to Government employees may not be used.

(2) Promotional/restricted fares offered by noncontract carriers to the general public may be used provided:

(i) The traveler can meet all qualifying restrictions associated with such fares, and

(ii) The service provided by the noncontract carrier is equal to or better than that of an awardee with respect to en route trip times.

(3) Agencies should take into account any penalty fee a carrier may impose when reservations for promotional/restricted fares are canceled or changed.

(d) The traveler and/or the traveler's agency, at the time reservations are made or travel is performed (whichever occurs first), shall demonstrate that the awardee did not offer the same fare cited in the cost comparison. Justification for using the noncontract carrier shall be shown on the travel authorization or travel voucher, as provided in paragraph (a) of this section.

§ 301-15.28 Traveler liability.

In the absence of specific authorization or approval stated on or attached to the travel authorization or travel voucher, a civilian traveler shall be responsible for any difference in the cost that may result from the traveler's unauthorized use of noncontract service or the failure to observe the order of award succession. The traveler's indebtedness to the Government shall be the difference between the price of the service used and the lowest contract fare applicable to the travel involved. The entitlement of a uniformed services traveler who fails to use directed Government-procured transportation shall be as specified in the Joint Federal Travel Regulations, Volume 1.

Subpart C—Travel and Transportation Expense Payment System: Contractor-Issued Charge Cards, Centrally Billed Accounts, and Travelers Checks

§ 301-15.40 Scope of subpart.

This subpart prescribes policies and procedures governing the use of the General Services Administration (GSA) travel and transportation expense payment system. GSA has contracted for the issuance and maintenance of individual contractor-issued charge cards, the establishment of centrally billed accounts, and the issuance of travelers checks. The GSA travel and transportation expense program includes provisions for the following:

(a) Individual employee charge cards used to pay for major travel and transportation expenses; i.e., passenger

transportation tickets, vehicle rental charges, lodging, meals, etc. (see § 301-15.44);

(b) Centrally billed accounts used by designated agency offices primarily for the purchase of passenger transportation services (see § 301-15.45); and

(c) Travelers checks (or cash) used for other expenses; i.e., laundry, parking, local transportation, or tips (see § 301-15.46).

§ 301-15.41 Applicability.

(a) This subpart applies to Federal agencies and departments which participate in GSA's travel and transportation expense payment system using contractor-issued charge cards, centrally billed accounts, and travelers checks.

(b) Except for the use of contractor-issued charge cards and travelers checks, this subpart permits eligible cost-reimbursable contractors working for the Government to participate in GSA's travel and transportation expense payment system.

§ 301-15.42 Definitions.

For the purposes of this subpart the following definitions apply:

(a) "Centrally billed" means a Government Travel System account established by the charge card contractor at the request of a participating agency.

(b) "Charge card" means a contractor-issued charge card to be used by travelers of a participating agency to pay for passenger transportation services, subsistence expenses, and other allowable travel and transportation expenses incurred in connection with official travel.

(c) "Cost-reimbursable contractor" means a contractor performing work under a cost-reimbursable contract(s) or other eligible contract(s) as defined in 48 CFR part 51, including (but not limited to):

(1) Contractors working under cost-reimbursable contracts or other types of contracts involving direct travel costs to the Government; and

(2) Contractors working for the Government at specific sites under special arrangements with the applicable contracting agency, and which are funded at such sites through Congressional appropriations; e.g., Government-owned, contractor operated (GOCO), federally funded research and development (FFRDC), or management and operating (M&O) contracts.

(d) "Federal Travel Directory" (FTD) means a monthly publication issued by GSA and the Department of Defense to

provide up-to-date information on charge cards, contract fares, lodging rates, car rental, per diem rates, travel management centers, and other travel and transportation matters. Federal agencies and employees should order copies of the FTD through their appropriate headquarters administrative offices. The FTD also is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The publication stock number is 722-006-00000-3.

(e) "T3Participating agency" means agencies and departments that participate in GSA's travel and transportation expense payment system.

(f) "Travel Management Center" (TMC) means a commercial travel firm under contract to GSA that provides reservations, ticketing, and related travel management services for official travelers.

(g) "Travelers checks" are contractor-issued travelers checks.

§ 301-15.43 Agency participation.

(a) Agencies or departments desiring to participate in the travel and transportation expense payment program should contact the Travel Management Division (FTB), General Services Administration, Washington, DC 20406.

(b) Only the headquarters agency office can approve participation in the program. Interested offices within the participating agency shall contact their local administrative or travel office to initiate this program. The charge card contractor will issue charge cards and establish centrally billed accounts only upon the request of authorized representatives of participating agencies.

§ 301-15.44 Individual employee charge cards.

(a) *Authority.* Under 41 CFR 101-41.203, Federal agencies normally use a U.S. Government Transportation Request (GTR), SF 1169, to purchase passenger transportation services directly from a common carrier or through a commercial travel agent under contract to GSA (see subpart A of this part). Authority to deviate from 41 CFR 101-41.203 was granted by the Administrator of General Services on August 4, 1983, thus allowing eligible individuals to participate in the charge card program.

(b) *Issuing charge cards.* Participating agencies shall determine and name employees who may be issued an individual employee charge card. The employees will be requested to complete an employee card account application for agency approval and submission to

the contractor. The charge card is issued directly to the employee in his or her name. The charge card contractor mails charge cards to authorized individuals or to requesting agency offices. Cost-reimbursable contractors are not eligible to use the charge card.

(c) *Use of charge cards.* (1) The employee shall use charge cards issued under this program only for expenses incurred in conjunction with official travel. The employee shall use the charge card to pay for official travel expenses to the maximum extent possible. There is no preset expense limit on the charge cards. Although the employee is liable for payment of all charges incurred, the employee shall be reimbursed by his/her agency for all authorized and allowable travel and transportation expenses. However, employees are cautioned that charges in excess of authorized and allowable travel and transportation expenses (i.e., lodging and meal costs which exceed authorized amounts) are the financial responsibility of the employee and are not reimbursable. Use of the charge card does not relieve the employee of the responsibility to employ prudent travel practices and to observe rules and regulations governing official travel as set forth in this subtitle and implementing agency regulations.

(2) The charge card may be used to pay for passenger transportation services (including services under contract fares offered by carriers under contract to GSA) at the transportation carrier's ticket counter, TMC, or agency travel office, as appropriate, under the participating agency's policies and procedures. Agencies may elect to prohibit employees from using the charge card to purchase services directly from a carrier. The charge card shall not be used to procure travel and transportation services from commercial travel agencies that are not under contract to the Government to provide such services to the Government traveler.

(d) *Monthly contractor bills and payments.* The terms of the contract with the charge card contractor require billing and payment to be performed in the following manner. The contractor bills charges directly to the individual employee each month. Charges billed to the individual employee are due and must be paid in full within 25 calendar days of the billing date. There are no interest or late charges, and extended or partial payment is not permitted. Questions concerning billings and payments should be directed to the charge card contractor at the toll free telephone numbers published in the FTD.

(e) *Travel voucher claims—(1) Preparing and submitting travel vouchers.* Upon completing official travel, the employee must prepare and submit a travel voucher in the usual manner, together with any required receipts, to the appropriate finance or paying office. The employee is reimbursed for travel and transportation expenses authorized and allowable under this subtitle and agency policies and procedures. Participating agencies shall process travel vouchers within the time limits prescribed in Office of Management and Budget (OMB) Bulletin 88-17, dated July 22, 1988. Copies of OMB Bulletin 88-17 are available from the Publications Office, Executive Office of the President, Washington, DC 20503.

(2) *Unused transportation tickets.* Unused or partially unused tickets purchased with individual cards shall be returned to a TMC or carrier and a refund credit receipt obtained. Unused tickets that have been prepaid for pickup at the airport must be refunded by the airline upon whose ticket stock the ticket was issued. The employee may claim reimbursement on the travel voucher only for the cost of the tickets actually used. Refunds for unused tickets will be credited to the employee's account. The unused tickets shall not be submitted with the travel voucher.

(3) *Transportation charges and assignment of rights.* Use of charge cards for purchase of passenger transportation services is considered to be a cash purchase. Travel vouchers submitted for reimbursement of transportation purchased with charge cards must include a statement which assigns to the United States all rights which the traveler has in connection with recovery of overcharges from the carrier(s). This statement is preprinted on the SF 1012, Travel Voucher, and must be initialed by the employee when claiming reimbursement for transportation expenses. Employees using agency travel vouchers under approved exceptions to the SF 1012 must add this statement if it is not preprinted on the voucher.

(f) *Charge card cancellation and suspension.* Charge cards may be canceled by the employee, the participating agency, or the charge card contractor. Cancellations may be accomplished by telephone notification with subsequent written confirmation to the charge card contractor. The charge card contractor may cancel an employee's card when the contractor's statement has not been paid in full 120 calendar days after the date the statement was issued. The contractor

may suspend an employee's card when the contractor's statement has not been paid in full 60 calendar days after the date the statement was issued. In either event, the contractor will cancel or suspend an employee's card only on notification to and with the concurrence of the participating agency.

(g) *Lost or stolen charge cards.* An employee is not responsible for any charges incurred against a lost or stolen card provided the employee promptly reports loss of the card to the contractor under the terms of the cardmember agreement signed by the employee when the charge card was issued. Employees may call 24 hours a day to report lost or stolen charge cards. The toll free telephone numbers are published in the FTD.

(h) *Financial obligations/liability.* Except for charges accrued against promptly reported lost or stolen cards, employees with charge cards are liable for all billed charges. (See paragraphs (c) and (g) of this section.) Government employees must pay their just financial debts under section 206 of Executive Order 11222 (May 8, 1965) and Office of Personnel Management Regulations, 5 CFR 735.207. At the request of the contractor, Federal agencies and departments, without Government liability, may assist in collecting delinquent employee accounts after 60 calendar days. The Government assumes no liability for charges incurred on employee charge cards, nor is the Government liable for lost or stolen charge cards.

§ 301-15.45 Centrally billed accounts.

(a) *Establishment.* (1) Participating agencies may establish centrally billed accounts with the contractor for one or more designated offices within the agency primarily to purchase transportation services for groups or for infrequent travelers; i.e., employees not designated to receive individual cards. Agencies shall ensure that only authorized personnel use the accounts and that all tickets purchased are authorized. Charge cards are not issued for centrally billed accounts.

(2) The Federal agency also may allow centrally billed accounts to be established for use by eligible cost-reimbursable Government contractors. These accounts must be established at the specific request of the agency and are subject to approval by GSA's contracting officer.

(b) *Use of centrally billed accounts.* Centrally billed accounts may be used only if agencies use a TMC or agency travel office. They are intended principally to supplement the individual card, rather than as the sole means of

purchasing transportation tickets for all agency employees.

(c) *Contractor billing and payment.* Consolidated contractor airline ticket charges accrued through use of centrally billed accounts shall be billed monthly to the agency's finance and paying office. Expenses billed monthly against centrally billed accounts are paid to the contractor. Monthly payment of charges incurred through the use of centrally billed accounts is subject to the provisions of the Prompt Payment Act, as amended (31 U.S.C. 3901), and charges billed to agency offices are due in full within 30 calendar days of the billing date.

(d) *Travel voucher claims—(1) Preparation and submission of travel vouchers.* Upon completing official travel, the employee shall prepare and submit a travel voucher in the usual manner, together with any required receipts, to the finance and paying office, to be reimbursed.

(2) *Unused transportation tickets.* The employee shall submit to the appropriate agency office all unused transportation tickets (wholly or partially unused) purchased under a centrally billed account. In turn, the agency shall return the unused tickets to the TMC through use of the SF 1170, Redemption of Unused Tickets, and maintain a copy of the SF 1170 on file until the credit appears as an adjustment to the agency's bill from the TMC. Policies and procedures regarding the use of the SF 1170 are provided in 41 CFR subpart 101-41.2.

(e) *Financial obligations/liability.* The Government is liable only for authorized charges incurred in conjunction with official travel on centrally billed accounts.

§ 301-15.46 Travelers checks.

(a) Travelers checks issued under this program are available to participating agencies in a wide range of denominations. Specific arrangements for issuing, shipping, and paying for bulk stocks of travelers checks are made between the travelers check contractor and the participating agency.

(b) Lost or stolen travelers checks shall be promptly reported by telephone to the travelers check contractor. Employees may call 24 hours a day to report lost or stolen travelers checks and to obtain refund information. The toll free telephone numbers are published in the FTD.

§ 301-15.47 Additional agency guidance and information.

(a) *Purchasing passenger transportation.* (1) Passenger transportation services procured with

contractor-issued charge cards under this payment system are not subject to the cash limitation established by the Administrator of General Services at 41 CFR 41.203-2. Any credit card other than the contractor-issued charge card and all travelers checks used to purchase passenger transportation services shall be considered the equivalent of cash and subject to the cash limitation provisions of 41 CFR 101-41.203-2.

(2) A portion of the charge card application form is to be used to record the standard Federal organization code(s) contained in the Department of Commerce/National Bureau of Standards publication, Codes for the Identification of Federal and Federally-assisted Organizations (FIPS PUB 95), dated December 23, 1982. Specific details concerning this requirement will be communicated by the charge card contractor directly to each participating agency.

(b) *Submitting passenger ticketing information to GSA for audit.* (1) Travel vouchers containing reimbursable transportation charges purchased with contractor-issued charge cards shall not be considered transportation vouchers under 41 CFR 101-41.807.

(2) Passenger ticketing information is furnished directly by the charge card contractor to GSA's Office of Transportation Audits. It is used to identify and collect carrier overcharges.

(c) *Examination of payments and collection.* The Transportation Act of 1940, as amended (31 U.S.C. 3726), authorizes the GSA Transportation Audit Division (see 41 CFR 101-41.102) to issue a notice of overcharge when GSA finds that a carrier has been overpaid for the services rendered.

(1) Under the provisions of 41 CFR subpart 101-41.5, carriers are requested to promptly refund amounts due the United States. Refund checks are to be made payable to the General Services Administration and promptly mailed to the General Services Administration, P.O. Box 93746, Chicago, IL 60673. Payment or credit to the contractor is not considered proper payment of overcharge claims due the U.S. Government.

(2) Protests to notices of overcharge are handled and processed in accordance with 41 CFR 101-41.503.

(3) Collection of unrefunded overcharges owed to the U.S. Government are processed in accordance with 41 CFR 101-41.504.

(4) Debts collected by GSA based on audits of transportation accounts are deposited to miscellaneous receipts, U.S. Treasury.

(5) Claims against the United States related to the actions taken above are processed under 41 CFR subpart 101-41.6.

(6) Reconsideration and review of CSA transportation claim settlements follow the provisions of 41 CFR subpart 101-41.7.

(d) *Employee training.* Participating agencies shall ensure that each of their eligible employees is adequately trained in the use of the contractor-issued charge card or centrally billed account before allowing them to use either.

PART 302-1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY CONDITIONS

10. The authority citation for part 302-1 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

11. Section 302-1.3 is amended by revising paragraph (a)(3) to read as follows:

§ 302-1.3 General provisions.

(a) * * *

(3) New appointees, as provided in § 302-1.11, relocating from their places of actual residence at the time of appointment (or at the time following the most recent Presidential election, but before selection or appointment, in the case of individuals who have performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) and who are appointed in the same fiscal year as the Presidential inauguration that immediately follows their transition activities) for permanent duty to official stations within the United States.

12. Section 302-1.11 is amended by revising paragraphs (b)(2) and (e) to read as follows:

§ 302-1.11 Shortage-category appointees, student trainees, Senior Executive Service appointees, and certain Presidential appointees.

(b) * * *

(2) *Travel before appointment.* Authorized expenses may be paid even though the individual concerned has not been appointed at the time travel to the first official station is performed. For individuals who have performed Presidential transition activities, as described in § 302-1.3(a)(3), allowable Presidential election. However, entitlement to such expenses does not vest by virtue of selection for the position or authorization for travel as provided in § 302-1.3(c) but vests only

upon actual appointment of the individual concerned.

(e) *Alternate origin and destination.* The limit on travel and transportation expenses in each individual case is the cost of direct travel or transportation as allowable between the individual's place of residence at the time of selection or assignment (or in the case of individuals having performed Presidential transition activities, as described in § 302-1.3(a)(3), the place of residence at the time of relocation following the most recent Presidential election) and the official station to which he/she is appointed or assigned; however, travel and transportation may be from and/or to other locations if the new appointee or student trainee pays any excess cost involved in such alternate travel or transportation.

Appendix to Subtitle F [Removed]

13. The appendix to subtitle F of title 41 is removed.

Dated: February 23, 1990.

Richard G. Austin,
Acting Administrator of General Services.
[FR Doc. 90-6666 Filed 3-22-90; 8:45am]
BILLING CODE 6820-24-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-518; RM-6123]

Television Broadcasting Services; Medford, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes UHF television Channel 26 for Channel 27 at Medford, Oregon, in response to a proposal filed by Junko and Bobby C. Shehan, applicants for Channel 27 at Medford, and permits amendment of their application without loss of protected status. See 54 FR 35009, August 23, 1989. Coordinates for Channel 26 at Medford are 42-17-54 and 122-44-59.

Although the Commission has imposed a freeze on TV allotments or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 4, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-518, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments for Oregon, is amended under Medford by removing Channel 27 and adding Channel 26+.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.
[FR Doc. 90-6640 Filed 3-22-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-131; RM-6702]

Radio Broadcasting Services; Grand Coulee, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 253C for Channel 253C2 at Grand Coulee, Washington, and modifies the license of Station KEYG-FM to specify operation on the higher class co-channel, at the request of Wheeler Broadcasting, Inc. See 54 FR 25714, June 19, 1989. Grand Coulee and the surrounding area can receive enhanced FM service. The coordinates for Channel 253C at Grand Coulee are 47-52-48 and 118-58-20. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 4, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 89-131, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by removing Channel 253C2 and adding Channel 253C at Grand Coulee.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6641 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-330; RM-6722]

Radio Broadcasting Services; Altoona, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 251A to Altoona, Wisconsin, as that community's first local FM service, at the request of Margaret Keefer. See 54 FR 32675, August 9, 1989. The allotment of Channel 251A at Altoona is made consistent with the Commission's minimum distance separation requirements at the city reference coordinates. The coordinates are 44-48-26 and 91-26-49. With this action, this proceeding is terminated.

DATES: Effective May 4, 1990; the window period for filing applications will open on May 7, 1990, and close on June 6, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-330, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for

inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin, by adding Altoona, Channel 251A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6642 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-132, RM-6705]

Radio Broadcasting Services; Whitewater, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293A to Whitewater, Wisconsin, as that community's second local FM service, at the request of Caribbean Broadcasting Corporation. See 54 FR 25482, June 15, 1989. Channel 293A can be allotted to Whitewater in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) north of the community. The coordinates are 42-54-02 and 88-44-01. With this action, this proceeding is terminated.

DATES: Effective May 4, 1990; the window period for filing applications will open on May 7, 1990, and close on June 6, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-132, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin, by adding Channel 293A at Whitewater.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6643 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the domestic annual processing (DAP) flatfish fisheries have attained their secondary prohibited species catch (PSC) allowable of Pacific halibut 567 metric tons (mt), in the Bering Sea and Aleutian Islands (BSAI) area. Therefore, the Secretary of Commerce (Secretary) is prohibiting any further DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" in the entire Bering Sea and Aleutian Islands area. This action is necessary to prevent excessive bycatch of Pacific halibut in the trawl fishery for groundfish in an area of particular importance to the Pacific halibut stock. This action is intended to carry out the objectives of measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

EFFECTIVE DATES: 12:00 noon, Alaska Standard Time (a.s.t.), March 19, 1990, through midnight December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett (Resource

Management Specialist), NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Secretary approved, on July 7, 1990, Amendment 12A to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands area (FMP) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 12A was implemented by the Secretary with a final rule published August 9, 1989 (54 FR 32642) and effective September 3, 1989, through December 31, 1990.

The purpose of Amendment 12A is to limit incidental catches of the prohibited species *C. bairdi* Tanner crab, red king crab, and Pacific halibut by the groundfish fisheries in the BSAI area. Such incidental catches are referred to as bycatches in fisheries targeting other species. The amendment establishes 20 PSC limits in four fisheries: the DAP fisheries for flatfish, the DAP fisheries for other species, joint venture processing (JVP) fisheries for flatfish, and the JVP fisheries for other species.

Each of the 20 PSC allowances prescribed for the 1990 groundfish fisheries appears in the initial specifications notice for 1990 for the BSAI area (55 FR 1434; January 16, 1990). The PSC allowances were based on the anticipated bycatch of prohibited species derived by a mathematical prediction procedure, which used statistical information derived from fishery performance in previous years and projected performance for the 1990 fishing year. The secondary PSC allowance for Pacific halibut in the BSAI area for the DAP flatfish fisheries is 567 mt.

Closure

The Regional Director has determined that the secondary DAP flatfish PSC allowance for Pacific halibut in the BSAI area will be reached by March 19, 1990. Under regulations implementing Amendment 12A, when the secondary PSC allowance for Pacific halibut for the DAP flatfish fishery is reached, the entire Bering Sea and Aleutian Islands area is closed to further directed fishing

for yellowfin sole, rock sole, and "other flatfish" by DAP vessels.

Therefore, the Secretary, by this notice and under authority of § 675.21(c)(2)(iv), prohibits for the remainder of the fishing year the retention by DAP vessels of groundfish caught from the entire Bering Sea and Aleutian Islands area that is composed of 20 percent or more in the aggregate of yellowfin sole, rock sole and "other flatfish".

Classification

These actions are taken under § 675.20 and § 675.21 and they comply with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 19, 1990.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-6626 Filed 3-19-90; 4:21 pm]

BILLING CODE 3510-33-M

Proposed Rules

Federal Register

Vol. 55, No. 57

Friday, March 23, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

[CN-90-002]

User Fees for Cotton Classification and Testing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to maintain the user fees charged to cotton producers for classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1990 user fee for this classification service would remain at \$1.23 per bale.

Fees charged for cotton classification services under the U.S. Cotton Standards Act would be increased. Also, higher fees are proposed for other classification and testing services. These proposed fees are necessary to recover the increased costs of providing such services including administrative and supervisory costs.

DATES: Comments must be received by April 9, 1990.

ADDRESSES: Comments and inquiries should be addressed to Ronald H. Read, Cotton Division, AMS, USDA, Room 1641-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ronald H. Read, (202) 447-2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a

significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The proposed fee increases merely reflect a minimal increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increase will not affect competition in the marketplace; (3) the use of classification and testing services and the purchase of standards is voluntary.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1990.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for manual classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was \$1.23 during the 1989 harvest season (54 FR 23449) as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The charges cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This proposed rule would maintain the user fee for manual classification charged to producers at \$1.23 per bale. This fee was calculated by adjusting the 1989 base fee for the rate of inflation and the projected size of the crop and adding a surcharge necessary to maintain a minimum operating reserve as required by the Act. The 1989 base fee is \$1.20 per bale. A 4.1 percent, or five cents per bale, increase due to the Implicit Price Deflator of the Gross National Product would be added to the \$1.20 resulting in a 1990 base fee of \$1.25 per bale. The 1990 crop is currently estimated at 14,671,000 running bales. The base fee would be decreased 15 percent based on the estimated size of the crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales, limited to a maximum adjustment of 15 percent). This percentage factor would amount to a 19 cents per bale reduction and would be subtracted from the base fee of \$1.25 per bale resulting in a fee of \$1.06 per

bale. There would be a surcharge of five cents added to the \$1.06 per bale fee since the projected operating reserve is less than 25 percent. The five cent surcharge would result in a 1990 season fee of \$1.11 per bale. Assuming a fee of \$1.11, the projected operating reserve is one percent. An additional 12 cents per sample must be added to provide an ending accumulated operating reserve for the fiscal year of at least 10 percent of the projected cost of operating the program. This would establish the 1990 season fee of \$1.23 per sample, the same as for 1989. Accordingly, no change to the language that appears in § 28.909 B is necessary.

The additional fee for High Volume Instrument (HVI) classification would remain 50 cents per bale. Thus, the fee for HVI classification during the 1990 harvest season would remain at \$1.73 per bale. As provided for in the Uniform Cotton Classing Fees Act of 1987, a 5-cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 would also remain at \$1.23 per bale since the fee for review classification is the same as the original classification fee. Likewise, the fee for HVI review classification would remain at \$1.73 per bale. Accordingly, since the 1990 harvest season fees for manual and HVI classification and review classification would be the same as the current fees, no change to the language of sections 28.909 and 28.911 would be needed.

Fees for Classification Services Under the United States Cotton Standards Act

Certain cotton classification services are conducted under the United States Cotton Standards Act. Fees for these services have been reviewed. In order to recover increased costs, including supervision and overhead, it is proposed that the fees for classification of cotton or samples in § 28.116 be increased: for grade, staple and micronaire readings from \$1.45 per sample to \$1.50; for grade and staple only from \$1.25 per sample to \$1.30; and for grade only or staple only from \$1.00 to \$1.05. A fee for High Volume Instrument (HVI) classification under this act is being proposed for HVI classification; including grade, the proposed fee is \$2.00 per sample; excluding grade, the proposed fee is \$1.65 per sample. The current additional

fee of 25 cents per sample would increase to 30 cents per sample unless the sample became Government property immediately after classification. In addition, for any review classification of any cotton, the fees would be the same.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one would be established at 10 cents per bale. The current fee for this service is \$4.50 per sheet. A minimum fee would be established at 4.75 per sheet. The additional hourly fee charged for Form C determinations in §§ 28.120 and 28.149 would increase from \$20.00 per hour or each portion thereof to \$21.00 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in § 28.122 for a complete practical classing examination for cotton or cotton linters would increase from \$135.00 to \$140.00 and the fee for reexamination for a failed part, either grade or staple, would increase from \$80.00 to \$85.00. Fees for the classification, comparison, or review of linters in § 28.148 would increase from \$1.30 to \$1.35 per bale or sample involved. In § 28.148, the fee for classification or comparison of cotton linters and the issuance of a memorandum would increase from \$1.30 to \$1.35 per sample.

Fees for Classification Services Under the U.S. Cotton Futures Act

The United States Cotton Futures Act (7 U.S.C. 15b) authorizes the Secretary to make such regulations as are necessary to carry out the provisions of that Act. Pursuant to that authority, part 27 of the regulations (7 CFR part 27) provides for cotton classification under the Cotton Futures Act including fees to recover the costs of classification and micronaire. Under this proposal, the fees charged for the services would be increased to cover the costs of providing such services, including overhead costs.

These fees have been reviewed and it is proposed that the fees in § 27.80 for initial classification be increased from \$1.30 per bale to \$2.00 per bale; for review classification to be increased from \$1.50 per bale to \$2.00 per bale. The fee for combination service (initial classification, review classification and micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates) would be increased from \$2.80 per bale to \$3.50 per bale. All supervision fees would be increased by 5 cents to 10 cents. Pursuant to § 27.85, fees for withdrawal of requests or applications for review, after such

services have been started, are the same as the fees in § 27.80 for services completed, so such charges would be affected by this proposal. Fees for certificates which appear in § 27.81 would increase from 65 cents to 70 cents per certificate.

Testing Services

Cotton testing services are provided by the USDA Laboratory in Clemson, South Carolina under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471-478). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services be reasonable and cover as nearly as practicable the costs of rendering the services. The cost of providing High Volume Instrument (HVI) measurement has increased since the last fee increase in 1989 due to higher costs for salaries and miscellaneous overhead costs including supplies and materials. Therefore, this fee would be increased to recover the cost of this service.

The fee for HVI measurement in § 28.956, item 5.0 would be increased from \$1.60 to \$1.65 per sample.

It has been determined that a 15-day comment period is appropriate for interested persons to comment on this proposed regulatory revision because all user fee increases in the revision are required by the Acts governing the services, and the new user fee charged to producers for the classification of cotton must be announced not later than June 1, 1990, as provided in the Uniform Cotton Classing Fees Act of 1987. The new user fee charged to cotton producers was calculated in accordance with the Uniform Cotton Classing Fees Act of 1987. Other user fee increases in the revision reflect fees needed to recover the costs of providing these services as are required in the Acts governing these services.

List of Subjects

7 CFR Part 27

Commodity futures, Cotton classification, Samples, Micronaire, Spot markets.

7 CFR Part 28

Administrative practice and procedures, Cotton, Cotton linters, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, the following amendments to

7 CFR parts 27 and 28 are proposed to be amended as follows:

PART 27—[AMENDED]

1. The authority citation for part 27 would continue to read as follows:

Authority: 90 Stat. 1841-1846; 7 U.S.C. 15b.

2. Sections 27.80 except paragraph (c) and 27.81 would be revised to read as follows:

§ 27.80 Fees; classification, micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, person requesting the services shall pay fees as follows:

(a) Initial classification and certification—\$2.00 per bale.

(b) Review classification and certification—\$2.00 per bale.

(c) Combination service—\$3.50 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates.)

(d) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together—\$1.60 per bale.

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—\$1.60 per bale.

(f) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—\$2.75 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—\$2.00 per bale.

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purpose of business convenience, or when made necessary by the transfer of cotton under the supervision of any exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of \$.70 cents for each certificate issued.

PART 28—[AMENDED]

3. The authority citation for subpart A of part 28 would continue to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

4. Sections 28.116 would be amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 28.116 Amounts of Fees for classification; exemption.

(a) For the classification of any cotton or samples, the person requesting the services shall pay a fee, as follows, subject to the additional fee provided by paragraph (c) of this section.

(1) Grade, staple, and micronaire reading—\$1.50 per sample.

(2) Grade, staple only—\$1.30 per sample.

(3) Grade only or staple only—\$1.05 per sample.

(4) High Volume Instrument (HVI), including grade—\$2.00 per sample.

(5) HVI, excluding grade—\$1.65 per sample.

(b) When a comparison is requested of any samples with a type or with other samples, the fees prescribed in paragraphs (a)(1), (2), and (3) of this section shall apply to every sample involved, including each of the samples of which the type is composed.

(c) An additional fee of 30 cents per sample shall be assessed for services described in paragraphs (a) and (b) of this section unless the request for service is so worded that the samples become Government property immediately after classification.

5. Sections 28.117, 28.120, and 28.122 would be revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of 10 cents per bale or a minimum fee of \$4.75 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspection and sampling, the preparation of the samples and delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party

requesting classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of \$21.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be \$140.00. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed. The fee for this practical reexamination is \$85.00.

6. Sections 28.148 and 28.149 would be revised to read as follows:

§ 28.148 Fees and costs; classification; review; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of \$1.35 for each bale or sample involved. The provisions of § 28.115 through 28.126 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For examples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of \$21.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of each request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

7. The authority citation of subpart B of part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

8. Section 28.184 would be revised to read as follows:

§ 28.184 Cotton Linters; general.

Requests for the classification or comparison of cotton linters pursuant to

this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be \$1.35 per sample.

9. The authority citation for subpart D of part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

10. Paragraph (b) of § 28.910 would be amended by revising it to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be 10 cents per bale or a minimum of \$4.75 per sheet.

11. The authority citation for subpart E of part 28 would continue to read as follows:

Authority: Sec. 3c, 50 Stat. 62; 7 U.S.C. 473c; Sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

12 Section 28.956 would be amended by revising the fee charged for item No. 5 to read as follows:

§ 28.956 Prescribed Fees.

Fees for fiber and processing tests shall be assessed as listed below:

Item No.	Kind of test	Fee per test
5.0.....	High Volume Instrument (HVI) measurement. Readings micronaire, length, length uniformity, 1/8-inch gage strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample.	1.65

Dated March 21, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-6779 Filed 3-22-90; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

7 CFR Part 800

General Regulations

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is proposing to amend the regulations under the United States Grain Standards Act (USGSA) to discontinue the mandatory reporting requirements for the individual components broken corn (BC), broken kernels (BN), and foreign material (FM), on each certificate for grade representing nonexport inspections of corn and sorghum. To satisfy current market information needs, the individual component results for "broken corn and foreign material" (BCFM) in corn and "broken kernels, foreign material, and other grains" (BNFM) in sorghum will be reported on a request basis. FGIS will continue to generate market data on the individual components through its monitoring program. This process will provide sufficient data to evaluate the market and economic implications of establishing separate grade limits for the individual components.

DATES: Comments must be submitted on or before May 22, 1990.

ADDRESSES: Comments must be submitted in writing to Paul D. Marsden, USDA, FGIS, Room 0628 South Building, Box 96454, Washington, DC 20090-6454; telex users may respond to [IRSTAFF/FGIS/USDA] telex; telex users may respond to Paul D. Marsden, TLX: 7607351, ANS:FGIS UC; telecopy users may respond to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

David R. Galliat, Acting Administrator, FGIS, has determined that this proposed rule will not have a

significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirements for small entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section 3504(h) of the Act, the information collection and record keeping requirements contained in this proposal previously approved by OMB under Control Number 0580-0011, have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Agriculture, Room 3201, NEOB, Washington, DC 20503.

Background

The Grain Quality Improvement Act of 1986 (GQIA) amended the USGSA to prohibit the recombination of dockage and foreign material to grain. FGIS published a final rule in the June 30, 1987, *Federal Register* (52 FR 24432), which, effective July 30, 1987, amended the corn and sorghum standards to include a definition for the individual components of the factors BCFM and BNFM. The factors BCFM and BNFM were retained as grade determining factors under the Official U.S. Standards for Grain. Further, the regulations were amended to require the reporting of individual component results on each official certificate for grade representing nonexport inspections of corn and sorghum. This provision was established to promote an awareness in the domestic marketplace as to the level of foreign material in BCFM and BNFM and to develop a database for analyzing the implications of establishing separate grade limits for these individual components. In order to assess the impact of establishing separate grade limits for these components on the export market, the June 30, 1987, *Federal Register* publication also announced that BCFM and BNFM component results would be placed on the inspection log for export shipments.

FGIS has randomly collected the domestic BCFM and BNFM components data through its Grain Inspection Monitoring System (GIMS), an automated information system employed by FGIS to monitor the

grading accuracy of official inspection personnel. FGIS is using its Export Grain Information System (EGIS) to collect export data concerning sorghum BN and FM, and corn BC and FM. The data in EGIS represents the weighted or mathematical factor averages for each export shipment. Further, FGIS and the Economic Research Service (ERS) have compiled and evaluated the data to determine the actual levels of BNFM found in the marketplace and to assess the market and economic impact of establishing individual BN and FM grade limits.

In addition to collecting the component data for BCFM through the GIMS and EGIS, FGIS has endorsed and partially funded a BCFM study which is being conducted by Iowa State University and the University of Illinois. The objectives of the study entitled "Costs and Benefits of Redefining the Grade Factor Broken Corn Foreign Material (BCFM) in Corn", are to:

- Determine the quantities and values of BC/FM at each point in the market channel, under alternative definitions of BC/FM.
- Estimate the operational costs of cleaning and transshipment of cleanings. Identify cost savings associated with cleaning.
- Establish a demand function for both clean corn and corn cleanings, under alternative definitions of BC/FM. This includes retaining the current combined definition.
- Compare the market response and distribution of costs versus benefits for separate BC and FM standards and the current combined BCFM standard.

The universities' comprehensive study is not expected to be completed until December 1990. FGIS will use the information from the GIMS, EGIS, and the academic study to evaluate the costs and benefits of establishing separate grade limits for BC and FM in corn.

The GIMS database currently includes both the original and supervisory component results. However, access to only one set of data is required to effectively analyze whether separate grade limits should be established for BC/FM and BN/FM. Consequently, FGIS can continue collecting its standards development data by requiring the FGIS monitoring offices to continue with the determination of BC/FM and BN/FM. In order to maintain the EGIS database, the practice of recording component information on the export log will continue.

One of the principal objectives for providing the individual component

results on the certificate was to inform the corn and sorghum industry as to the level of FM currently in BCFM and BNFM. It was anticipated that this information would permit the market to factor in the actual amount of foreign material when establishing pricing and quality requirements. FGIS believes, however, that there does not appear to be much industry-wide interest in receiving this information at this time. Therefore, it is proposed to offer this information on request which should satisfy current market needs.

Based on current market needs and available alternative methods for data collection, FGIS is proposing to revise § 800.162 to discontinue the mandatory reporting requirements for individual components BC, BN, and FM on each certificate for grade representing nonexport inspections of corn and sorghum. However, under section 800.162 (a)(7), this information could be reported on a request basis for nonexport inspections of corn and sorghum. Accordingly, it is proposed that paragraph (b) of section 800.162 be deleted, that paragraph (c) be redesignated as (b), and conforming and clarifying changes be made to that paragraph.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set forth in the preamble, 7 CFR part 800, is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*)

2. Section 800.162 (b) is removed; and § 800.162 (c) is redesignated as § 800.162 (b) and revised to read as follows:

§ 800.162 Certification of grade; special requirements.

(b) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraph (a) of this section, the results of all official grade factors defined in the Official United States Standards for Grain for the type of grain being inspected.

Dated: February 28, 1990.

D.R. Gallart,

Acting Administrator.

[FR Doc. 90-6670 Filed 3-22-90; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV-90-136PR]

Expenses and Assessment Rates for the Marketing Orders Covering Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 911 and 915 for the 1990-91 fiscal year (April 1—March 31) for each marketing order program. These proposed expenditures and assessment rates are needed by the administrative committees established under these orders to pay program expenses and collect assessments from handlers to pay those expenses. The proposed action would enable these committees to perform their duties and the programs to operate.

DATES: Comments must be received by April 2, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the *Federal Register*.

FOR FURTHER INFORMATION CONTACT:

Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Marketing Agreement and Marketing Order Nos. 911 (7 CFR part 911) regulating the handling of limes grown in Florida, and 915 (7 CFR part 915) regulating the handling of avocados grown in South Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has

been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 26 handlers of Florida limes and 34 handlers of Florida avocados subject to regulation under these marketing orders, and about 260 lime producers and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each administrative committee is derived by dividing anticipated expenses by the expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, bushels, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of

assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee (FLAC) met February 7, 1990, and unanimously recommended a 1990-91 budget with expenditures of \$244,000 and an assessment rate of \$0.18 per bushel (55 pounds) of assessable limes shipped under M.O. 911. In comparison, the 1989-90 fiscal year budgeted expenditures were \$278,000 and the assessment rate was \$0.18 per bushel. FLAC assessment income for 1990-91 is estimated at \$234,000, based on shipments of 1,300,000 bushels of assessable limes, and interest income is estimated at \$10,000. The FLAC has about \$162,000 in its reserve, an amount well within the maximum authorized.

Major expenditure items in the FLAC budget for the 1990-91 fiscal year, compared with those budgeted for 1989-90 (in parentheses), are \$112,500 (\$105,300) for program administration, \$101,500 (\$102,700) for production research, and \$30,000 (\$70,000) for market development and public relations. The administration category includes expenditures for office operations, a program financial audit, program enforcement, and FLAC travel. Research and market development projects will be submitted later after they are fully developed and recommended by the FLAC. Research includes \$25,000 for a water table study by Ghioto, Inc., \$70,000 for a post-bloom drop study and \$6,500 for a grove management study by the University of Florida. Market development includes \$5,000 for public relations activities by the Florida Department of Agriculture and \$25,000 for projects to be developed later.

The Avocado Administrative Committee (AAC) met February 7, 1990, and unanimously recommended a 1990-91 budget with expenditures of \$127,000 and an assessment rate of \$0.16 per bushel (55 pounds) of assessable avocados shipped under M.O. 915. In comparison, the 1989-90 fiscal year budgeted expenditures were \$200,000 and the assessment rate was \$0.16 per bushel. The reduction in expenditures for 1990-91 reflects the substantially smaller crop estimated for next season, resulting from last winter's freeze. AAC assessment income for 1990-91 is estimated at \$112,000, based on shipments of 700,000 bushels of

assessable avocados, and interest income is estimated at \$5,000. The AAC plans to draw fund from its reserve, which currently amounts to about \$78,000, to cover the projected \$10,000 deficit for 1990-91.

Major expenditure items in the AAC budget for the 1990-91 fiscal year, compared with those budgeted in 1989-90 (in parentheses), are \$93,000 (\$113,800) for program administration, and \$34,000 (\$61,200) for production research. The administration category includes expenditures for office operations, a program financial audit, program enforcement, and AAC travel. Research projects will be submitted later after they are fully developed and recommended by the AAC. Research includes \$25,000 for a water table study by Ghioto, Inc., \$2,500 for a tree topping and thinning study and \$6,500 for a grove management study by the University of Florida.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 10 days is deemed appropriate for this action, because approval of the expenses and assessments rates must be expedited.

The fiscal year for these marketing orders begins on April 1, 1990, and the committees' expenses are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 911 and 915

Avocados, Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that §§ 911.229 and 915.229 be added as follows:

1. The authority citation for 7 CFR parts 911 and 915 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New §§ 911.229 and 915.229 are added to read as follows:

PART 911—LIMES GROWN IN FLORIDA

§ 911.229 Expenses and assessment rate. Expenses of \$244,000 by the Florida

Lime Administrative Committee are authorized, and an assessment rate of \$0.18 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989-90 fiscal year may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.229 Expenses and assessment rate.

Expenses of \$127,000 by the Avocado Administrative Committee are authorized, and an assessment rate of \$0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989-90 fiscal year may be carried over as a reserve.

Dated: March 19, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-6669 Filed 3-22-90; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

Import and Export of Radioactive Wastes; Extension of Comment Period

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; Extension of comment period.

SUMMARY: On February 7, 1990 (55 FR 4181), the NRC published for public comment an advanced notice of proposed rulemaking on the import and export of radioactive wastes. The date cited in the notice for comment period expiration was March 9, 1990. Informal requests have been received to extend this expiration date so that substantive comments can be formulated which would specifically consider the impact of the international codes, standards, guides, and recommendations on this subject. Because it is important that the public, industry, and other government agencies have suitable opportunity to review and comment on the need for and content of any proposed rule on the import or export of radioactive wastes, NRC has decided to extend the comment period until April 24, 1990.

DATES: The comment period has been extended and now expires on April 24, 1990. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to assure consideration of comments received before this date.

ADDRESSES: Mail comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to 11555 Rockville Pike, Rockville, MD between 7:45 a.m. and 4:15 p.m. Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: William R. Lahe, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3774.

Dated at Rockville, Maryland, this 19th day of March 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-6681 Filed 3-22-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Coal Product Valuation Regulations; Meeting; Correction

March 15, 1990.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed Rule; Notice of correction of meeting time.

SUMMARY: This Notice corrects the meeting time previously published in the *Federal Register* on March 9, 1990 (55 FR 8964), for a public meeting to be held in St. Louis, Missouri, on April 11, 1990, regarding revisions to coal product valuation regulations which were proposed on February 13, 1990 (55 FR 5024). The meeting will be held from 9:30 a.m. to 5:00 p.m.

Dated: March 16, 1990.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 90-6671 Filed 3-22-90; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD5 90-011]

Anchorage Ground; Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is considering a proposal to amend the boundaries of the Dead Ship Anchorage in Curtis Bay. The change has been requested by EA Engineering, Science, and Technology, to enable a diffuser to be placed on the ocean bottom in the southern portion of the present Dead Ship Anchorage. In addition, the northern edge of the Dead Ship Anchorage is shifting northward to align itself with the 50 foot deep, 400 foot wide Curtis Bay federal navigation channel.

DATES: Comments must be received on or before May 7, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Va 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Portsmouth, VA, Room 509. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Scott Keene, (804) 398-6285.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD5 90-011 and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT Scott Keene, project officer and LT Steven Fitten, project attorney, Fifth Coast Guard District.

Discussion of Proposed Regulations

EA Engineering, Science, and Technology, Inc. in Baltimore, MD, is working with their client W. R. Grace and Company, Davison Chemical Division, to bring treated effluent, which presently discharges into the Chesapeake Bay from a pipe on the southern shore of Curtis Bay, into compliance with newly revised State of Maryland water quality regulations. To do this, the effluent would be discharged from a diffuser located in the southern portion of the present Dead Ship Anchorage. The pipeline leading to the diffuser will be buried, however the diffuser itself will be placed on the ocean bottom approximately 200 yards from shore. The diffuser's position will be marked with a privately maintained buoy, and will have a length of 100 feet, with a diameter of 2 feet. To enable the diffuser to be built with minimal impact to anchored vessels, the southern edge of the Dead Ship Anchorage will be moved from its present shoreline position, approximately 200 yards to the north. In addition, U.S. Army Corps of Engineers is mandated to maintain Curtis Bay Channel at a depth of 50 feet. This new mandate will reduce the width of Curtis Bay Channel from 600 feet to 400 feet, altering the northern edge of the Dead Ship Anchorage 200 feet to the north.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Discussions with the Association of Maryland Pilots and local tug boat companies indicate that the proposed change in boundaries will not affect the capacity of the anchorages.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 417, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.158(a)(8) is revised to read as follows:

§ 110.158 Baltimore Harbor, MD.

(a) * * *

(8) *Dead ship anchorage.* The waters bounded by a line connecting the following points:

Latitude	Longitude
39°13'00.0" N	76°34'11.5" W
39°13'13.5" N	76°34'11.9" W
39°13'14.5" N	76°34'06.9" W
39°13'15.4" N	76°33'30.9" W
39°13'00.0" N	76°33'31.0" W

and thence to the point of beginning.
DATUM: NAD 27

This anchorage shall be used as a dead ship anchorage only. A written permit from the Captain of the Port must be obtained prior to the use of this anchorage for any period of time.

Dated: March 16, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.

[FR Doc. 90-6658 Filed 3-22-90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 65

[Common Carrier Docket No. 89-624; DA 90-432]

Represcribing the Authorized Rate of Return for the Interstate Services of Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; establishment of revised pleading schedule for rate of return represcription proceeding; addition of issues and parties.

SUMMARY: The action grants a four-day extension of time for filing responsive submissions, and extends the due dates for all subsequent submissions by the same number of days. The action also expands the scope of the proceeding to

include prescription of a zone of reasonable earnings and a sharing mechanism for carriers that will be subject to price cap regulation. An additional opportunity to file Notices of Appearance is provided; supplemental submissions and replies addressing the price caps issues are called for; and the due date for proposed findings and conclusions is extended by two weeks.

DATES: Responsive submissions are due March 27, 1990. Carrier rebuttal submissions are due April 17, 1990. Notices of appearance for new parties are due April 17, 1990. Supplemental submissions are due May 1, 1990. Replies to supplemental submissions are due May 15, 1990. Proposed findings and conclusions are due June 26, 1990. Reply findings and conclusions are due July 10, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Jackson, Telephone (202) 632-7500.

SUPPLEMENTARY INFORMATION:

Background

Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T and Local Exchange Carriers, CC No. Docket 87-463, and Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, 5 FCC Rcd 197 (1989), 55 FR 4820 (1990).

Summary of Order

This is a summary of the Commission's Order in Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, DA 90-432, CC Docket No. 89-624 (adopted March 14, 1990; released March 15, 1990.)

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision will be published in the "FCC Record" and may also be purchased from the commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

1. This order amends the pleading schedule of the captioned proceeding as directed by the Commission in its Supplemental Notice of Proposed Rulemaking in CC Docket 87-313,¹ the

price caps proceeding. This order also grants in part the Motion for Extension filed in the captioned proceeding on February 21, 1990 by the Consumer Coalition.²

2. On February 21, 1990, the Consumer Coalition moved for a two week extension of the time allowed for the filing of responsive submissions. It is the policy of the Commission that extensions of time shall not be routinely granted.³ We find that Consumer Coalition has shown good cause for a brief extension of time, but that it has not made a persuasive argument for a longer extension. Responsive submissions will be due March 27, 1990, and all other pleading dates will be likewise delayed.

3. For the guidance of the parties, we note that part 65 allows mail service of initial submissions, responsive submissions, carrier rebuttals, and requests for oral argument.⁴ Hand service on the day of filing is required for documents related to requests for discovery, documents related to requests for cross examination, and for proposed findings and conclusions and reply findings.⁵

2. Changes Required by the Price Caps Supplemental Notice

12. In the Supplemental Notice the Commission sought comment on proposals to prescribe an earnings zone of reasonableness for price caps carriers and to require carriers to share with their customers a portion of their earnings above some prescribed level.⁶ The Commission stated that it was expanding the captioned rate of return represcription proceeding to add the issues of the price caps earnings zone and the sharing mechanism.⁷ The Commission directed the Common Carrier Bureau to amend the pleading schedule of this proceeding to allow for the addition of parties and for the submission of testimony on the added issues.⁸

Notice"). See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989) and Erratum, 4 FCC Rcd 3379 (1989) (together "Second Further Notice").

² The Consumer Coalition consists of the Consumer Federation of America, the International Communications Association, and MCI Telecommunications Corporation.

³ 47 CFR 1.46(a).

⁴ Sections 65.102(c)(4), -65.106(c).

⁵ Sections 65.103(d), -65.104(c), -65.105(c).

⁶ Supplemental Notice, ¶¶ 159-176.

⁷ Supplemental Notice, ¶¶ 177-182.

⁸ Supplemental Notice ¶ 181.

¹ Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, FCC No. 90-89 (released March 12, 1990) ("Supplemental

4. We hereby amend the pleading schedule as follows:

- February 2, 1990—Notices of appearance
- February 16, 1990—Initial carrier submissions
- March 27, 1990—Responsive submissions
- April 17, 1990—Carrier rebuttal submissions
- April 17, 1990—Notices of Appearance
- May 1, 1990—Supplemental submissions
- May 15, 1990—Replies to supplemental submissions
- June 26, 1990—Proposed findings and conclusions
- July 10, 1990—Reply findings and conclusions

In order to assure a complete and orderly record on all issues, we direct the parties to maintain the following discipline: Responsive submissions due March 27 shall address only those issues raised by the initial carrier submissions; carrier rebuttals due April 17 shall address only the responsive submissions. Supplemental submissions due May 1 and replies due May 15 shall address only those issues related to (1) the location of the upper and lower formula adjustment marks;⁹ and (2) the design and specification of the sharing mechanism.¹⁰ Any party of record may file a supplemental submission or a reply to a supplemental submission.

6. The rate of return submissions authorized in this order, including all argument, attachments, appendices, supplements, and supporting materials such as testimony, data, and documents but excluding tables of contents, shall be subject to the following double spaced typewritten page limits: The supplemental submission of any party shall not exceed 70 pages in length. The reply to each supplemental submission shall not exceed 50 pages in length.

7. Accordingly it is ordered, That the Motion for Extension filed February 21, 1990 by Consumer Coalition is granted to the extent provided herein.

8. It is further ordered, That schedule of pleadings in the captioned proceeding IS AMENDED as specified herein.

List of Subjects in 47 CFR Part 65

Communications common carriers, Rate of return.

Federal Communications Commission,
Richard Firestone,
Chief, Common Carrier Bureau.
[FR Doc. 90-6611 Filed 3-22-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-129, RM-7084, RM-7290]

Radio Broadcasting Services; Dothan, AL, et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two interrelated petitions. The first petition, filed by Emerald Coast Communications, Inc., licensee of Station WWAV(FM), Santa Rosa Beach, Florida, seeking the substitution of Channel 271C3 for Channel 272A at Santa Rosa Beach, Florida, and modification of the license for Station WWAV to specify the higher class channel. The proposal to upgrade at Santa Rosa Beach would require the substitution of Channel 269A for vacant but applied for Channel 271A at Graceville, Florida, and substitution of Channel 267A for Channel 270A at Springfield, Florida, and modification of the construction permit of Station WYOO(FM) at Springfield. The second petition, filed by Broadcast Associates, Inc. requests the substitution of Channel 273C3 for Channel 273A at Dothan, Alabama, and modification of the construction permit for Station WESP(FM), to specify Channel 273C3. The upgrade at Dothan requires the substitution of Channel 269A for Channel 271A at Graceville, Florida. The coordinates for Channel 271C3 at Santa Rosa Beach are North Latitude 30-22-31 West Longitude 86-21-00. The coordinates for Channel 269A at Graceville are North Latitude 30-55-00 and West Longitude 85-29-54. The coordinates for Channel 267A at Springfield are North Latitude 30-12-30 and West Longitude 85-33-41. The coordinates for Channel 273C3 at Dothan, Alabama, are North Latitude 31-14-40 and West Longitude 85-20-10.

DATES: Comments must be filed on or before May 11, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Bodorff, Wiley, Rein & Fielding, 1776 K Street NW., Washington, D.C. 20006, (Counsel for Emerald Coast Communications, Inc.) and Stephen G. McGowan, President, Broadcast Associates, Inc., Station WESP(FM), P.O. Box 5707, Dothan, Alabama 36302.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-129, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission,
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 90-0645 Filed 3-22-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-130, RM-7160]

Radio Broadcasting Services; Rockledge, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by D.V.R. Broadcasting requesting the substitution of Channel 274C2 for Channel 274A at Rockledge, Florida, and modification of its construction permit (BPH-861105NK) to specify operation on the higher class channel. Channel 274C2 can be allotted to Rockledge in compliance with the Commission's minimum distance separation requirements with a site

⁹ See Supplemental Notice, ¶ 162.

¹⁰ See Supplemental Notice, ¶¶ 163-168.

restriction of 24.2 kilometers (15.0 miles) north of the city. The coordinates for this allotment are North Latitude 28-33-30 and West Longitude 80-48-00. In accordance with Section 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 274C2 at Rockledge will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before May 11, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Peter Gutmann, Pepper & Corazzini, 1776 K Street NW., Suite 200, Washington, DC 20006 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-130, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6646 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-127, RM-7203]

Radio Broadcasting Services; Erath, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Solo Music Company, proposing the substitution of Channel 299C3 for Channel 299A at Erath, Louisiana, and the modification of its construction permit for Station KRAR(FM) at Erath to specify operation on the higher powered channel. Channel 299C3 can be allotted to Erath consistent with the Commission's minimum distance separation requirements at coordinates 29-57-30 and 92-02-12.

DATES: Comments must be filed on or before May 11, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Keith Frederick, General Partner, Solo Music Company of Louisiana, Route 1, Box 837A, Erath, LA 70533 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-127, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6647 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-131, RM-7162]

Radio Broadcasting Services; Bowling Green, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the substitution of Channel 231C3 for Channel 231A at Bowling Green, Missouri, in response to a petition filed by Pike County Broadcasting Co., Inc. Petitioner also requests modification of its license for Station KPCR-FM to specify operation on Channel 231C3. The coordinates for Channel 231C3 are 39-21-57 and 91-10-45.

DATES: Comments must be filed on or before May 11, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Paul Salois, President, Pike County Broadcasting Co., Inc., P.O. Box 1, Hwy 54 East, Bowling Green, Missouri 63334.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-131, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73:

Radio Broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6648 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-132, RM-7152]

Radio Broadcasting Services; Brookline, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Laurie L. Amkarlo, proposing the allotment of FM Channel 271A to Brookline, Missouri, as that community's first FM broadcast service. The coordinates for Channel 271A are 37-09-46 and 93-25-12.

DATES: Comments must be filed on or before May 11, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Laurie L. Amkarlo, 2343 S. Terrace Dr., Springfield, Missouri 65804.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-132, adopted March 5, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6649 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-126, RM-7199]

Radio Broadcasting Services; Livingston, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WLIV, Inc., proposing the substitution of Channel 240C3 for channel 240A at Livingston, Tennessee, and the modification of its license for Station WXXG(FM) at Livingston to specify operation on the higher powered channel. The upgrade can be accomplished at the site specified by the petitioner located 12.1 kilometers (7.5 miles) southwest of the city, at coordinates 36-18-42 and 85-25-15.

DATES: Comments must be filed on or before May 11, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Harry F. Cole,

Esq., Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-126, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6650 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-128, RM-7202]

Radio Broadcasting Services; Union City, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Twin States Broadcasting proposing the allotment of Channel 289A at Union City, Tennessee, as that community's second local FM service. A site restriction of 10.7 kilometers (6.6 miles) north of the city is

required. The coordinates are 36-31-01 and 89-05-21.

DATES: Comments must be filed on or before May 11, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eric S. Kravetz, Esq., Brown, Finn & Nietert, Chartered, 1920 N Street, NW., Suite 660, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of

Proposed Rule Making, MM Docket No. 90-128, adopted March 6, 1990, and released March 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time of a notice of proposed rule making is issued until the

matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6651 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 55, No. 57

Friday, March 23, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: Bureau of the Census.

TITLE: 1990 Company Organization Survey (COS).

Form Number(s): NC-9901, NC-9907.

Agency Approval Number: 0607-0444.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 76,899 hours.

Number of Respondents: 93,000.

Avg Hours Per Response: 50 minutes.

Needs and Uses: The Census Bureau uses the COS annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of companies containing such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. The updated SSEL provides a current directory of business locations for use in economic monthly, quarterly, and annual surveys, most of which are conducted on a sample basis. It is also used to develop the mailing list for the economic censuses. Government agencies use the tabulated data in various economic development programs, and businesses use it for economic analysis and planning.

Affected Public: Businesses or other for-profit organizations, Non-profit institutions, and Small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by

calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 20, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-6688 Filed 3-22-90; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: Bureau of the Census.

Title: Survey of the Income and Program Participation 1990 Panel Wave 3.

Form Number(s): SIPP-10300, SIPP-10305(L).

Agency Approval Number: 0607-0670.

Type of Request: Revision of a currently approved collection.

Burden: 22,575 hours.

Number of Respondents: 45,150.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) provides information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. The survey is molded around a central core of labor force and income questions that remain fixed throughout the life of a panel. The core survey is periodically supplemented with questions, referred to as topical modules, designed to answer specific needs. The topical modules for the 1990 panel Wave 3 are the following: (1) Work Schedule, (2) Child Care, (3) Child Support Agreement, (4) Support for Nonhousehold Members, (5) Functional Limitations and Disability, and (6) Utilization of Health Care Services.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 20, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-6689 Filed 3-22-90; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

Federal Register citation of previous announcement: 90-5545, 55 FR 9155, March 12, 1990.

Previously announced time of meeting: 9:00 a.m. April 10 and 11, 1990.

Changes in meeting: 9:00 a.m., April 17-19, 1990, the Herbert C. Hoover Building, Room 1617-F, 14th Street and Pennsylvania Avenue NW., Washington, DC. Fully closed.

Dated: March 19, 1990.

Ruth D. Fitts,

Acting Director, Technical Support Staff.

[FR Doc. 90-6690 Filed 3-22-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Short-Supply Review and Request for Comments; Certain Rotogravure Doctor Blade Steel Strip

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain rotogravure doctor blade steel strip.

SHORT-SUPPLY REVIEW NUMBER: 13.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a petition for a short-supply allowance for 54.4 metric tons of certain rotogravure doctor blade steel strip under Article 8 of the U.S.-EC steel arrangement during 1990.

FOR FURTHER INFORMATION CONTACT:

Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the Federal Register on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations"), the Secretary hereby announces that a short-supply determination is under review with respect to certain rotogravure doctor blade steel strip. On March 20, 1990, Nedwick Steel Company ("Nedwick") submitted an adequate petition to the Secretary requesting a short-supply allowance for 54.4 metric tons of this product under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products.

The requested product meets the following specifications:

Chemistry (weight percentage nominal):

Carbon: 1.0 Silicon 0.25, Manganese 0.40, Phosphorus 0.015 max, Sulphur 0.004 max;

Width and tolerance: 5 inches \pm 0.008 inch;

Thicknesses tolerances: 0.006 inch \pm 0.000236 inch, and 0.008 inch \pm 0.000315 inch;

Surface: bright fine polished, surface roughness R_{max} < 2.5 μ meter (m), R_a < 0.25 μ m;

Straightness: 0.024 inch/10 feet max;

Flatness and tolerances: Extra accurate, with tolerances as follows:

Thickness inch	Unflatness across and lengthwise percentage of strip width
0.006	0.30
0.008	0.25

Tensile strength: 283 \pm 7 KSI;

Hardness: 588 HV nom;

Edges: deburred;

Form of supply: coils;

Cleanliness: Goroz Beckart cleanliness standard of maximum 700;

Camber: 0.012 inch/10 feet max.

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary, on the basis of available information, finds that this product is not produced in the United States. Therefore, in accordance with Section 4(b)(4)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Regulations, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice proving that they can and will produce and supply the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than April 4, 1990.

Comments: Interested parties wishing to comment on this review must send written comments not later than March 30, 1990 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of

proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-6743 Filed 3-22-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and the Council's Administrative Committee will meet April 3-5, 1990, at the Blue Beard's Castle Hotel, Charlotte Amalie, U.S. Virgin Islands.

The Council will hold its 69th regular public meeting primarily to consider and take a final vote on Amendment #1 to the Shallow-water Reef Fish Fishery Management Plan (FMP), and also to discuss other FMPs. The Council will meet April 4 from 9 a.m. to 5 p.m., and reconvene on April 5 from 9 a.m. to noon.

The Caribbean Council's Administrative Committee will meet on April 3 from approximately 2 p.m. to 5 p.m., to discuss administrative matters related to Council operations.

Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding the agenda items. For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926.

Dated: March 16, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-6605 Filed 3-22-90; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a public meeting on April 11-12, 1990, at the Annapolis Ramada, 173 Jennifer Road, Annapolis, MD; telephone: (301) 266-3131.

The Council will begin the meeting on April 11 at 8:30 a.m., and will adjourn during the mid-afternoon of April 12. The Council will discuss the definition of overfishing for Amendment #1 to the Summer Flounder Fishery Management Plan (FMP), discuss the New England Fishery Management Council's Scallop and Multispecies FMPs, and discuss other fishery management and administrative matters. The Council also may hold a closed session (not open to the public) to discuss employment and/or national security matters.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: March 16, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-6606 Filed 3-22-90; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a public meeting of its King and Spanish Mackerel Advisory Panel on April 10-11, 1990, at the Tampa Embassy Suites Hotel, 4400 West Cypress, Tampa, FL. On April 10 the Panel will begin meeting at 1:30 p.m., to discuss the 1990 mackerel stock assessment, and to develop recommendations on total allowable catch and bag limits for the 1990-91 fishing year. The Panel also will hear a status report on Amendment Nos. 3 and 5 to the Coastal Migratory Pelagics (mackerels) Fishery Management Plan. The meeting will adjourn on April 11 at noon.

A detailed agenda is available to the public. For more information contact Carrie R.F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: March 16, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-6607 Filed 3-22-90; 8:45 am]

BILLING CODE 3510-22-M

Technology Administration

National Medal of Technology Nomination Evaluation Committee

AGENCY: Office of Technology Commercialization, Technology Administration, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee was rechartered on January 26, 1990. The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters dealing with the criteria for determining the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

TIME AND PLACE: The meeting will begin at 10 a.m. and end at 3:45 p.m. on April 16, 1990. The meeting will be held in Room 280 at the National Academy of Engineering, 2101 Constitution Avenue, NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, Room 4426, Washington, DC 20230, (202) 377-5572.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of 5 U.S.C. 552(c) (4) and (6) was approved by the Assistant Secretary of Commerce for Administration, with the concurrence of the General Counsel on March 15, 1990, in accordance with the Federal Advisory Committee Act, since the discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and may also disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records

Inspection Facility, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, Room 6628, Washington, DC 20230. (202) 377-4210.

Dated: March 20, 1990.

Lee W. Mercer,

Deputy Under Secretary for Technology.

[FR Doc. 90-6665 Filed 3-22-90; 8:45 am]

BILLING CODE 3510-18-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 23, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 3, 1989, January 12, 19, 26 and February 2, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 46445, 55 FR 1246, 1862, 2677 and 3634) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540). After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities

Folder, IRS Tax Form
Document No. 6983
Trunks, General Purpose
8415-01-311-0379

Services

Commissary Shelf Stocking

Naval Supply Center, Commissary
Branch Store, Athens, Georgia.

Janitorial/Custodial

Idaho Department of Energy Building,
785 DOE Place, Idaho Falls, Idaho.

Janitorial/Custodial

Social Security Administration Building,
3116 St. Claude Avenue, New Orleans,
Louisiana.

Janitorial/Custodial

U.S. Army Reserve Center, Rt. 3 and
Delchester Road, Edgemont,
Pennsylvania.

Janitorial/Custodial

U.S. Army Reserve Center, 400 Horsham
Road, Horsham, Pennsylvania.

Janitorial/Custodial

U.S. Army Reserve Center, 936 Easton
Road, Horsham, Pennsylvania.

Janitorial/Custodial

U.S. Army Reserve Center, Division &
Woodlawn Avenue, Willow Grove,
Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-6686 Filed 3-22-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and

services to be provided by workshop for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 23, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 F.R. 46540):

Commodities

Cap, Utility, Camouflage

8405-01-246-4176

8405-01-246-4177

8405-01-246-4178

8405-01-246-4179

8405-01-246-4180

(Remaining 50% of Government Requirement.)

Hood, Radioactive Contaminant Protective

8415-00-NSH-0027

Services

Food Service Attendant

Cannon Air Force Base, New Mexico.

Janitorial/Custodial

Charles E. Boston, U.S. Army Reserve Center, Houma, Louisiana.

Janitorial/Custodial

Federal Center, Buildings 605, 606, 608, 614, 615 and 608A, Walla Walla, Washington.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-6687 Filed 3-22-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF90-107-000]

Ellicottville Energy, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 19, 1990.

On Ellicottville Energy, Inc. (Applicant), of Route 219, P.O. Box 749, Ellicottville, New York 14731, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located one mile north of Ellicottville, New York. The facility will consist of a combustion turbine generator, an unfired heat recovery boiler and a condensing steam turbine generator. Thermal energy recovered from the facility will be used in lumber-drying kilns. The net electric power production capacity will be approximately 4.1 MW. The primary energy source will be natural gas. The facility will begin operation on or about October 1, 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 925 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-6624 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10610-000, Idaho]**Trout Creek, Inc., Availability of Environmental Assessment**

March 16, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Trout Creek Project located on Trout Creek in Caribou county, near Thatcher, Idaho and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room HR-A of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-6120 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10611-000, Idaho]**Whiskey Creek, Inc., Availability of Environmental Assessment**

March 16, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Whiskey Creek Project located on Whiskey Creek in Caribou county, near Thatcher, Idaho, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room HR-A of the Commission's offices

at 825 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-6621 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD90-05375T; Texas-43, Addition-1]**Hidalgo County, TX; Tight Formation Determination**

March 16, 1990.

Take notice that on February 27, 1990, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that the Guerra Reservoir underlying certain portions of the McAllen Ranch (Guerra) field located in Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued February 5, 1990, finding that the formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1988)). All such comments should be filed within 20 days after publication of this notice in the Federal Register. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-6622 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS87-70-003, et al.]**American Exploration Co. et al.; Applications for Small Producer Certificates¹**

March 19, 1990

In the matter of: American Exploration Company, et al. (American Exploration Company, Ninian Oil Company, Ninian Oil Finance Corp., KEC Acquisition Corp., TES Acquisition Corp., TOC Acquisition Corp. and South States Oil & Gas Company), et al.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of

the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 5, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS87-70-003	* 2-20-90	American Exploration Company, et al. (American Exploration Company, Ninian Oil Company, Ninian Oil Finance Corp., KEC Acquisition Corp., TES Acquisition Corp., TOC Acquisition Corp. and South States Oil & Gas Company), 2100 RepublicBank Center, 700 Louisiana, Houston, TX 77002-2725.
CS90-21-000	2-22-90	Hawkins Oil & Gas, Inc., Hawkins Acquisitions Limited Partnership I, Hawkins Acquisitions Limited Partnership II and Dominion Reserves, Inc., 400 S. Boston, Suite 800, Tulsa, OK 74103.
CS90-22-000	3-6-90	Iowa Production Company, Inc., 1800 Augusta, Suite 216, Houston, TX 77057.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

¹ By letters dated February 14, 1990, Applicant requests that American Exploration Acquisition-VI

Corp. and Amkan Acquisition Corp. be included as co-holders of the small producer certificate.

[FR Doc. 90-6623 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2107-00, et al.]

Arkla Energy Resources, Inc.; Order Convening Technical Conference

Issued March 16, 1990.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

In the matter of Arkla Energy Resources, Inc., CNG Transmission Corporation, El Paso Natural Gas Company, Equitrans, Inc., Kentucky-West Virginia Gas Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipeline Company, Southern Natural Gas Company, Transcontinental Gas Pipe Line Corporation, Transwestern Pipeline Company, Williams Natural Gas Company, Docket Nos. CP89-2107-000, CP89-5-002, CP88-332-014, CP88-546-004, CP89-1179-001, CP88-312-006, CP88-2-010, CP89-834-003, CP88-473-004, CP89-759-001, CP88-99-012, CP90-235-001.

Background: Interruptible Sales Service

Interruptible Sales Service (ISS) certificates authorize pipelines to make interruptible sales for resale of natural gas supplies in interstate commerce. The gas sold must be surplus to the current and projected needs of the pipeline's existing on-system customers. Sales may be made to off-system and on-system interstate pipelines, "Hinshaw" pipelines, local distribution companies and natural gas marketers. The certificates also authorize the use of the pipelines' transmission facilities to make interruptible direct sales to end-users. Currently, ISS certificates authorize sales to be made at a rate negotiated for the particular transaction that falls between set maximum and minimum rates. The maximum rate must equal the 100 percent load factor rate for the zone in which delivery from the pipeline's system occurs and the minimum rate must equal the pipeline's actual weighted average cost of gas purchased for the month in which the gas is delivered, plus all variable costs incurred in rendering the services, plus the applicable Gas Research Institute (GRI) surcharge funding unit and annual charge adjustment (ACA) unit charge. To date, the Commission has issued nine ISS certificates.¹ None of the

certificates issued has been challenged directly on appeal.

Nonetheless, the Commission has received an increasing number of protests and critical comments in the ISS certificate applications filed over the two year life-span of ISS certificate program. Prior to expanding the program further, those protests have convinced us to establish an inquiry into the sufficiency of the terms and conditions imposed by the Commission in the certificate orders issued in the past.

Conditions

The Commission has also imposed certain conditions on ISS certificates which are designed to ensure that the interruptible sales service will be offered on a fully non-discriminatory basis. The conditions require that (1) the service will be available to all potential purchasers, including end-users; (2) the service may not be tied to any minimum purchase under the pipeline's other rate schedules; (3) the pipeline must offer interruptible transportation at a rate reflecting the same transportation cost regardless of whether the customer wishes to purchase gas under an ISS Rate Schedule or transport third party gas under an interruptible transportation schedule; (4) sales under Rate Schedule ISS must be treated in the same manner as any other first come/first service interruptible sales or interruptible transportation service for the purposes of scheduling, allocating capacity and curtailing service; and (5) the pipeline must adhere to certain notice procedures, discounted rate filings and reporting requirements. In addition, the certificates will expire if the pipeline receives authority to abandon its blanket certificate.

To ensure that the interruptible sales program is not subsidized by non-participating customers, for each Dt of gas sold the Commission requires the pipeline to credit to Account No. 191 the current monthly weighted average cost of purchased gas together with the fuel and company use component of the interruptible sales rate. The pipeline is required to credit a representative out-of-period adjustment amount equal to the monthly average of such adjustments actually experienced during the most recent 12 months for which such information is available to the refund subaccount of Account No. 191.

¹ Transcontinental Gas Pipe Line Corp., 46 FERC ¶ 61,351 (1989) and Panhandle Eastern Pipeline Co., 48 FERC ¶ 61,037 (1989).

Reporting Requirements; Notice and Protest

The reporting requirements for ISS sales involving affiliates require a pipeline to submit certain information prior to the sale including the buyer's name, location, affiliation and the nature of the affiliate's involvement, the terms, estimated total and maximum daily quantities of gas to be sold by the pipeline and the maximum and minimum sales rate, and the rate to be charged during the billing period. Commission staff has 30 days to review the filing, public notice of which follows such review (assuming compliance with the certificate's terms). The pipeline may begin the transaction when the notice is issued. Interested parties have 30 days from issuance of the notice to protest the service. If a protest is filed, the pipeline may continue the service for the earlier of 120 days from the date of commencement or until a termination order is issued. If no protest is filed or if the protest is denied, service may continue until the underlying contract expires.

Other Reporting Requirements

Transactions not involving affiliates may begin without any reporting required prior to commencement. However, within 30 days after the transactions do begin, the pipeline must file information about the ISS transactions including the parties involved, beginning and ending dates of the service, the estimated total and maximum daily quantities of gas to be sold or transported incident to a direct sale for each 12 month period beginning of the actual delivery date, the ultimate delivery point, the price and the WACOG included in the price.

For all ISS transactions any material change in the sales arrangement must be reported within 30 days. A monthly list of all ISS sales rates charged to all customers must be filed. No later than May 1 of each year, an annual report for each ISS service provided during the preceding year must be filed listing the total volumes sold or transported incident to direct sales, the total revenues received, the total rate charged and the WACOG included in the rate charged. Within 30 days after termination of any ISS sale, the total volumes sold or transported incident to a direct sale, the total revenues received, the total rate charged, the WACOG included in the rate charged and a statement clarifying that the service was provided under the terms and conditions previously reported must be reported.

¹ Northern Natural Gas Co., 42 FERC ¶ 61,303 (1988); Transwestern Pipeline Co., 43 FERC ¶ 61,240 (1988); El Paso Natural Gas Co., 45 FERC ¶ 61,466; CNG Transmission Corp., (1988); 45 FERC ¶ 61,322 (1988); Natural Gas Pipeline Co., 45 FERC ¶ 61,465 (1988); Southern Natural Gas Co., 45 FERC ¶ 61,461 (1988); Equitrans, Inc., 46 FERC ¶ 61,124 (1989);

If a pipeline charges less than the maximum rate during any billing period, it must file the information required by the prior notice procedures for affiliate transactions within 15 days of the close of the billing period except that it must provide the rate actually charged. If the discounted sale is to an affiliate, the pipeline need only file a notice stating the extent to which the transaction changed since the prior notice was filed.

Discussion

Numerous protests have been filed regarding ISS transactions and certificate applications in individual proceedings. For example, in the rehearing petitions on El Paso's ISS, Indicated Shippers argued that El Paso's obligation to offer a correlative discount for interruptible transportation, when IS-1 service is offered at a discount, should not apply only to the particular customer who is tendered the election between sales and transportation service but must be applicable to any delivery point, regardless of who the customer is, where IS-1 gas competes with, or can compete with, interruptible transportation gas. In Arkla's ISS certificate application Indicated Shippers, Natural Gas Clearinghouse, Hadson Gas Systems, Inc., and Vesta Energy Company offer expanded arguments, including the request that any discount offered in the interruptible transportation rate and offered whether Arkla makes either a formal or informal offer and whether or not Arkla actually reaches an agreement. Those intervenors also request that Arkla be required to identify, with specificity and in advance, the non-gas component and other cost components comprising the offered rate to ensure that comparable discounts are offered to competing transportation.

In orders issued concurrently today, the Commission addresses a limited number of these issues. In El Paso, Docket No. CP88-332-003, the Commission precludes pipeline ISS merchant service from having an undue advantage over pipeline transportation service by means of the movement of the point at which title to ISS gas transfers. In *Texas Ohio Gas, Inc. v. Equitrans, Inc.*, Docket No. CP84-1958-000, the Commission cautions that curtailment of transportation for a customer higher in the first-come, first-served queue in order to make ISS sales would be a violation of an ISS certificate, while finding no relief appropriate in that particular case. In *Transcontinental Gas Pipe Line Corp.*, Docket No. CP89-759-003, -004, the Commission denies protests regarding varying prices for ISS gas charged to

two affiliates, one jurisdictional and the other non-jurisdictional, while providing review in appropriate rate proceedings. In *Transwestern Pipeline Company* CP90-14-000, the Commission allows unbundling of sales (ISS) and transportation by requiring Transwestern to transfer title at the wellhead, or any intrastate or interstate interconnection where ITS or FTS service is available on Transwestern's system.

However, prior to processing more applications, and expanding thereby the universe of ISS merchants, the Commission deems it prudent to seek public comment on the ISS service available today, including general comment on the need for and propriety of such service in the current market, and specific comment on whether the terms and conditions utilized thus far remain sufficient to assure adequate protection for parties offering, receiving, and competing against such services. Consequently, the Commission is convening a Technical Conference and seeking written and oral comment, in general response to the issues stated in the Appendix and including other relevant concerns identified by commenters, in accordance with the following schedule.

(1) By March 23, any one interested in participating in the technical conference should submit to the Commission's Secretary the following information: Name of Company/Person. Whether the Person/Company has intervened in any of the listed dockets. If so, what issues were raised in the intervention. (Please identify by reference to the Appendix; if the issue raised in intervention is not listed in the Appendix, please state the issue.)

(2) March 28: Technical conference. Time and place to be announced later. Written responses to issues listed in the Appendix may be presented at that time along with any oral presentation. (Note: written responses may also be filed later.)

(3) April 11: all written comments/responses to the issues listed in the appendix, or to presentations made at conference, should be filed.

However, the Commission wishes to stress that the purpose and scope of the technical conference is not that of a section 5 proceeding under the Natural Gas Act in which the lawfulness of existing certificates is placed at issue. Depending upon the submissions made, it is possible that further actions may be taken by the Commission in appropriate proceedings, but only if warranted. The Commission regards the terms and conditions imposed thus far in ISS

certificate proceedings as providing clear standards of conduct, the violation of which could result in modification or, in certain cases, revocation of certificate authority. Nonetheless, the purpose and scope of the technical conference is to examine the sufficiency of the terms and conditions applied in the past when measured by the demands of current and future market conditions.

The Secretary is directed to publish this order in the *Federal Register*.

By the Commission, Commissioner Trabandt concurred.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

I. Correlative Discount

(A) Whether the correlative discount requirement has been effective in promoting competitive and fair pricing? If not, provide specific examples. Are other remedies more appropriate and effective? Identify them.

(B) Whether any discount offered in the non-gas component (i.e. the transportation cost) of the ISS rate must be offered in the interruptible transportation rate to all shippers using the same or competing delivery points for a given period during which the interruptible sales gas competes with, or can compete with, interruptible transportation gas.

1. Whether the transportation discount should be applicable:

- (a) So long as the ISS discount was actually offered during negotiations for ISS service (regardless of whether the ISS discount is ever actually implemented);
- (b) To formal and informal offers; and
- (c) Regardless of whether agreement is reached.

2. Whether the pipeline must identify, with specificity and in advance, receipt and delivery points, the non-gas cost component, and other cost components comprising the offered rate to ensure that comparable discounts are offered to competing transportation.

3. Whether the pipeline should be required to post the discounted ISS rates with sufficient notice to allow other parties to compete rather than permit individual negotiations with each customer.

(C) Whether discounts should be deemed first applied to the transmission component of any rate to avoid the claim that gathering, not transmission, costs are being discounted.

II. Transfer of Title at Receipt Points

(A) Whether ISS certificates should allow or require transfer of title to occur

at the system receipt point or at the well-head with transportation to be scheduled and provided pursuant to existing interruptible transportation rate schedules. Are other remedies more appropriate and effective? identify them.

(B) Whether the pipeline or the customer should decide the location of the receipt point.

III. Favoring Sales Over Transportation

(A) Whether pipelines should be allowed to curtail interruptible transportation while continuing to offer interruptible sales gas.

(B) Whether a capacity curtailment provision should allow ISS sales to have priority over existing interruptible sales and transportation service, or give the pipeline the unilateral right to discontinue interruptible services in capacity curtailment situations at any time.

(C) Whether the amount of pipeline available for ISS service should only be determined after consideration of the pipeline capacity needed for firm and interruptible transportation service.

1. Whether firm transportation customers should be on equal footing with firm sales when evaluating whether there is excess capacity to render ISS sales.

2. Whether purchasing practices should be examined as to the impact of such practices on available capacity at various receipt points, especially during those times that daily balancing is implemented.

3. Whether firm transportation should be allowed for interruptible gas sales.

4. Whether balancing penalties should apply to ISS service.

(D) Whether to require scheduling of ISS sales to be subject to the same conditions contained in the tariff for interruptible transportation service.

1. Whether to allow scheduling of ISS gas based on "economic value".

2. Whether to allow curtailment of those customers with the "lowest economic value" first.

3. Whether to allow scheduling of ISS gas based on delivery points.

(E) Whether allocation of available receipt points must be done on a first-come, first served basis for all ISS and ITS customers to ensure comparability of service.

(F) Whether pipelines should be required to nominate specific receipt points for specific ISS sales at the same time ITS customers make their nominations.

(G) Whether to allow a pipeline to maximize ISS sales by renegotiating the terms and conditions after submission of the receipt point nomination.

(H) Whether to require a pipeline to state explicitly in its tariff any conditions that would cause it to refuse requests for service under its ISS program.

IV. Affiliate Transactions

(A) Whether it is unduly discriminatory for a pipeline to charge its jurisdictional affiliate more for ISS gas than it is charging its unregulated marketer affiliate.

(B) Whether ISS certificates should be conditioned to require that if the pipeline offers a discount to an affiliated shipper it must offer a comparable and contemporaneous discount to all similarly situated non-affiliated shippers.

(C) Whether current prior notice reporting requirements for ISS sales to affiliates are sufficiently protective against undue discrimination.

V. GIC

(A) Whether ISS is needed once a GIC is in effect.

(B) Whether a pipeline would receive unwarranted GIC revenues by assessing its customers a GIC charge for gas not taken based on imputed take-or-pay liability then selling the same gas under the ISS program thereby avoiding the take-or-pay liability for the same gas.

VI. Rates

(A) Whether a pipeline should be required to sell its ISS gas at no less than the actual cost of that gas at the receipt point designated for its delivery into the system.

(B) Whether a least cost gas purchasing policy in conjunction with the ability to discount sales service under the ISS rate schedule substantially restricts the ability of other merchants to compete in markets on the pipeline's system.

(C) Whether the selective recall of released gas can be or is used to discriminate in an anticompetitive fashion against other shippers.

(D) Whether a pipeline should be required to utilize its WACOG for a stated period for purposes of the ISS and not be allowed to change the WACOG without appropriate notice to competitors. Whether manipulation of the WACOG can or does prevent meaningful competition. Provide examples.

(E) Whether objective and definitive standards must be established to avoid understating the ISS WACOG and recovering the difference as out-of-period adjustments.

(F) Whether rates for the ISS should be derived in section 4 rate cases. Whether costs should be fully allocated

to the ISS service and projected throughput should be included in the total volumes underlying a pipeline's sales rates to obviate the need to credit Account No. 191 with the currently effective WACOG, with adjustments.

(G) Whether, alternatively, if the Commission believes it is required to disallow revenue crediting of the full amount of revenues received because of *Northern Natural Gas Co. v. FERC*, 827 F.2d 779 (D.C. Cir. 1987) the Commission should impose an "in-line price condition" on the proposed service until the pipeline seeks new rates under section 4. That condition could be to require the pipeline to credit to Account No. 191 the maximum rate it has on file for its ISS which might provide incentives for the pipeline to make a section 4 filing and prevent the potential windfall and cost overrecovery.

(H) Whether inventory demand charge costs should be included in the rate for interruptible gas which has not been nominated and for which the pipeline has not maintained an inventory.

(I) Whether pipelines subsidize ISS sales with proceeds from firm system supply sales.

VII. Notice Reporting Requirements

(A) What specific requirements should be imposed regarding public notice ISS terms? For instance, should the tariff rate for the ISS service be posted at the same time scheduling commitments are required by the pipeline?

(B) Do the reporting requirements need to be modified? For what specific reasons?

(C) Should the pipeline be required to use an electronic bulletin board to post ISS information?

VIII. Miscellaneous

(A) Whether ISS service is appropriate for direct sales to end-users.

1. Whether it is unduly discriminatory and preferential in favor of the merchant function because it allows the provision of a special transportation service not available to third party suppliers.

2. Whether, without a case by case review, the Commission would be unable to review those situations where a pipeline would bypass local distribution companies to sell natural gas directly to end-users.

(B) Whether the ISS program should be of limited duration and subject to annual review.

(C) What specific instances have occurred of a pipeline's "bumping" transportation customers in order to make its own ISS sales?

[FR Doc. 90-6656 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP90-6-000]

DeNovo Oil & Gas, Inc.; Petition for Declaratory Order

March 19, 1990.

Take notice that on March 8, 1990, DeNovo Oil & Gas, Inc. (DeNovo) filed a petition for declaratory order pursuant to Rule 207 (18 CFR 385.207) of the Commission's rules of practice and procedure and Title I of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301, *et seq.*).

DeNovo requests a declaratory order from the Commission that reimbursement of a certain pipeline construction cost to DeNovo under the gas purchase and sales agreement between Louisiana Intrastate Gas Corporation (LIG), Buyer, and DeNovo, as successor to GoldKing Production Company, Seller, dated November 1, 1977, will not constitute a component of the first sale price under the NGPA and that LIG may reimburse said construction cost consistently with Title I of the NGPA. DeNovo notes that it has sued LIG in Civil District Court for the Parish of Orleans, State of Louisiana, in *DeNovo Oil & Gas, Inc. v. Louisiana Intrastate Gas Corporation*, No. 88-22306, to recover the construction cost and that LIG has asserted as a defense that reimbursement of the construction cost would violate federal price regulation under the NGPA. DeNovo further states that it has moved in court to stay that action until the Commission acts on this petition.

The procedures applicable to the conduct of this proceeding are found in the Commission's rules of practice and procedure (18 CFR part 385).

Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 214. All motions to intervene under said rule or answers pursuant to Rule 213 must be filed within thirty (30) days after publication of this notice in the Federal Register.

Lois D. Cashell,
Secretary.

[FR Doc. 90-6625 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ 90-2-40-000]

Raton Gas Transmission Co.; Filing of Quarterly Purchased Gas Adjustment

March 16, 1990.

Raton Gas Transmission Company (Raton) on March 9, 1990, tendered for filing proposed changes to its FERC GAS TARIFF, Original Volume No. 1, to implement its quarterly purchased gas adjustment under the provisions of Orders Nos. 483 and 483A. The proposed tariff sheet is to be effective April 1, 1990.

Raton states that the revised tariff sheet reflects a Demand Rate decrease of 2 cents to track rate change filed by Colorado Interstate Gas Company (CIG) to be effective on April 1, 1990.

Copies of this filing have been served on Raton's two customers and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1988)). All such motions or protests should be filed on or before March 23, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-6618 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-4-43-001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 16, 1990.

Take notice that Williams Natural Gas Company (WNG) on March 7, 1990, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Third Revised Sheet Nos. 6B-6D

The proposed effective date of these tariff sheets is January 1, 1990.

WNG states that the above referenced tariff sheets are being filed in compliance with the Commission's order issued December 26, 1989. In that letter order WNG was required to track any

further modifications to Transwestern's take-or-pay charges, no later than 15 days following Commission acceptance of such modifications. Transwestern made a compliance filing in Docket Nos. RP90-25-000, 001 and TM90-2-42-000 on December 29, 1989 to reflect elimination of carrying charges. The instant filing is being made to track this modification. By order issued February 20, 1990 the Commission accepted Transwestern's compliance filing to be effective December 1, 1989.

WNG states that in accordance with submission procedures for electronic filings in Commission Order No. 493, *et al.*, WNG hereby submits a diskette along with the corresponding hard copies. Such hard copies include the same information as contained on the diskette.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before March 23, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-6619 Filed 3-22-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Minority Economic Impact

Minority Undergraduate Training for Energy Related Training Program (MUTEC)

AGENCY: Office of Minority Economic Impact, DOE.

ACTION: Notice of program interest MI 0190 MT-1058.000.

SUMMARY: The Department of Energy (DOE), Office of Minority Economic Impact, desires to encourage the submission of unsolicited proposals in support of the Department's Minority Undergraduate Training for Energy-related Program. Such support is authorized by 42 U.S.C. 7141(d) and 7256(a); Public Law 95-619, part 3, § 2.11(d), which states that the Director of the Office of Minority Economic Impact may provide appropriate assistance to minority educational

institutions to enable these institutions to participate in the activities of the Department. It is intended in particular to obtain proposals from educational institutions, or from teams of organizations including qualified educational institutions. For purposes of this solicitation, a qualified educational institution is a school of higher learning (such as a college or university) that is a non-profit entity with a minimum of 25 percent total minority enrollment. "Minority" means any individual who is a citizen of the United States and who is a Negro, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent. This notice describes the principal scope of the activity and provides some guidance on submitting proposals.

With this notice, it is DOE's intent to encourage the submission of proposals for minority undergraduate training that would address the following program objectives:

1. Increase the number of minority students that select a course of study leading to energy-related careers.
2. Enhance the quantity and quality of energy-related undergraduate research and training provided to minorities.
3. Increase the pool of minority students selecting graduate study in energy-related disciplines.

The purpose of this notice is to encourage the submission of proposals that may:

1. Institute undergraduate energy-related training in mathematics, computer science, the physical sciences, the life sciences, and engineering including engineering technologies.
2. Recruit high school and community college students who have a desire to pursue careers in mathematics, science, and energy-related technologies.
3. Provide financial assistance to outstanding students in the areas mentioned above.
4. Establish linkages with DOE national laboratories to support summer research appointments for students recipients and faculty members.
5. Enhance energy-related curricula at the undergraduate level.
6. Provide support for travel expenses associated with participants' attendance at scientific meetings, workshops, and visits to laboratories.
7. Enhance the formal process of transfers from community colleges to four-year colleges and universities.

Authority: 10 CFR part 600 subparts A and B.

DATES AND ADDRESSES: Proposals (3 copies) should be submitted to Mr. Isiah O. Sewell, MI-1, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 5B-110, Washington, DC

20585 Applications received after May 18, 1990 will be held for 1 year and may be eligible for awards in FY 1991. Unsuccessful proposers will not be notified. Proposers receiving awards in FY 1990 will be notified not later than August 17, 1990. Each proposal must contain a cover sheet (Standard Form 424), the technical proposal and budget with justification.

FOR FURTHER INFORMATION CONTACT:

All questions concerning this program notice should be directed to Holly Salazar, MI-1, Staff Assistant, U.S. Department of Energy, Office of Minority, Economic Impact, 1000 Independence Avenue, SW., Room 5B-110, Washington, DC 20585; Telephone (202) 586-1591.

SUPPLEMENTARY INFORMATION:

Eligibility

Institution: To be eligible to participate in this program, an institution must have more than 25 percent minority enrollment. It should have a history of graduating minority students in some field of mathematics, computer science, the physical sciences, the life sciences, or engineering. This program is open to institutions within the United States and its territories. Institutions having more than one eligible component may choose whether to apply on behalf of the institution as a whole or to submit freestanding applications on behalf of one or more components. Individual components of a university, system, or other institutions are separately eligible.

Project Director: The Project Director is the representative and spokesman for the institution in matters concerning the award. The Project Director should be available for consultation with the DOE Program Manager and assist in resolving issues or problems encountered by the DOE Program Manager during the tenure of the project.

Award Size and Duration: FY 1990 funding up to \$1,000,000 is available for awards. It is estimated that these funds will support awards to six to nine schools with funding levels between \$75,000 and \$100,000. Future fiscal year awards will be subject to the availability of funds. The initial award may cover a term up to three years. The maximum DOE funding for each award will be \$100,000 per year with a five year limit of \$400,000 per grantee. The proposal may be funded in part or whole without further discussion with the proposer. These estimates of funding and number of awards do not bind the U.S. Department of Energy to a specific number of awards unless otherwise specified by statute or regulation.

Evaluation Process and Selection Criteria. Applications may be subjected to external review following preliminary screening. Projects will be selected for funding based on their quality as determined by DOE staff evaluation of the merit of the application using the following general criteria. The general criteria will be either acceptable or unacceptable.

1. The potential contribution which the proposed effort is expected to make to the program's objectives, if pursued at this time.
2. Evidence of overall merit.
3. Use of unique, innovative, or meritorious methods, approaches, or ideas, including formal agreements between institutions.
4. Qualifications, capabilities, and experience of the application's Project Director and key personnel who are considered to be critical in achieving applicant objectives.
5. The extent of cost-sharing provided from non-Department of Energy sources.

The following specific criteria will be applied to projects. These criteria, along with the general criteria described previously, will form the technical evaluation of each project. Final selection of projects will be made by DOE based on the technical evaluations and other factors such as duplication of activities, total program balance, the level of cost-sharing from non-federal programs, and other factors.

1. Identification of needs of the project.
 - a. Institutional assessment of proposed requirement.
 - b. Identification of specific research and training objectives.
 - c. Involvement of appropriate entities in establishment of project needs.
2. Plan of operation.
 - a. Definition of discrete activities needed with appropriate time and resource projections.
 - b. Management Plan.
 - c. Relationship of this project to the overall institutional plan.
3. Pool of potential student trainee participants.

Proposal Preparation Guidelines: Proposals submitted in response to this solicitation shall contain the information required in this announcement and should reference Program Notice 0190MI-10158.000. Proposals will be evaluated, independently, as received and selected for awards up to the limit of available funding. DOE assumes no responsibility for any costs associated with proposal preparation under this announcement.

Issued in Washington, DC on March 19, 1990.

Department of Energy
Melva G Wray,
Director, Office of Minority Economic Impact
[FR Doc 90-6652 Filed 3-22-90; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3748-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Sole Source Aquifer Designation Program (ICR #1431.03; OMB #2040-0109). This ICR requests reinstatement of a previously approved collection for which approval has expired.

Abstract: Under the Safe Drinking Water Act, a petitioner, who can be any individual or organization, submits hydrogeological and technical information to EPA on a one-time basis. EPA uses this information to determine if an aquifer is the sole source of an area's drinking water. If so, EPA may review federally-funded projects proposed for the area to determine whether they threaten to contaminate the aquifer, and may subsequently determine that a project is ineligible for Federal financial assistance.

Burden Statement: The public reporting burden for this collection of information is estimated to vary from 392 to 560 hours per response, with an average of 476 hours. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Any individual, corporation, company, association, partnership, State, municipality or Federal Agency.

Estimated No. of Respondents: 8
Estimated Total Annual Burden on Respondents: 3808 hours
Frequency of Collection: One time.
Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project (2070-0057), Washington, DC 20503, Telephone: (202) 395-3084.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1556.01; Mercury in Paint Census; was approved 03/05/90; OMB #2070-0116; expires 06/30/90.

EPA ICR #1541.02; National Emission Standards for Benzene Waste Operations; was approved 03/01/90; OMB #2060-0183; expires 03/31/93.

EPA ICR #1542.01; Wetlands Indian Regulation; was approved 02/23/90; OMB #2040-0140; expires 02/29/93.

EPA ICR #0922.03; Data Call-In/Special Review Chemicals and Generic Data Program; was approved 02/28/90; OMB #2070-0057; expires 12/31/92.

EPA ICR #1088.05; Final NOX Amendments to NSPS for Industrial-Commercial-Institutional Steam Generating Units; was approved 02/21/90; OMB #2060-0072; expires 09/30/92.

Dated: March 15, 1990.

Paul Lapsley,
Director, Regulatory Management Division.
[FR Doc. 90-6676 Filed 3-22-90; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3748-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740
SUPPLEMENTARY INFORMATION:

Office of Water

Title: Sole Source Aquifer Demonstration Program (ICR # 1431.04). This is a new collection.

Abstract: Under the Safe Drinking Water Act, State and local government agencies submit technical, economic, and jurisdictional information to EPA on a one-time basis as part of their Sole Source Aquifer Demonstration Program applications. If EPA approves a demonstration program proposal, the State or local government agency will be eligible for future Federal funds.

Burden Statement: The public reporting burden for this collection of information is estimated to vary from 779 to 1299 hours per response, with an average of 1039 hours. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: State or local government agencies.

Estimated No. of Respondents: 15.
Estimated Total Annual Burden on Respondents: 15,600 hours.

Frequency of Collection: One time.
Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project (2070-0057), Washington, DC 20503, Telephone: (202) 395-3084.

Dated: March 15, 1990.

Paul Lapsley,
Director, Regulatory Management Division.
[FR Doc. 90-6677 Filed 3-22-90; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRP-3748-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comment prepared March 5, 1990 through March 9, 1990 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for

copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 [54 FR 15006].

Draft EISs

ERP No. D-AFS-L61185-AK, Rating EC2, Frosty Bay Timber Sale, Implementation, Frosty Study Area, Tongass National Forest, Wrangell Ranger District, AK.

Summary: EPA's main concern is the effect of the action alternatives on water quality. EPA believes that the lack of a water quality monitoring plan may make it difficult to ensure that Alaska Water Quality Standards (WQS) will be met and beneficial uses protected. Additional information on compliance with WQS, monitoring, and mitigation measures is needed.

ERP No. D-COE-F36158-IL, Rating LO, O'Hara System Flood Control Reservoir Project, Chicagoland Underflow Plan, Implementation, Cook County, IL.

Summary: EPA believes that the proposed project should not significantly affect the human health and the surrounding environment.

Final EISs

ERP No. F-AFS-L61148-WA, Okanogan National Forest, Land and Resource Management Plan, Implementation, Okanogan, Skagit, Chelan and Whatcom Counties, WA.

Summary: EPA believes this document was responsive to the major environmental concerns. However, EPA feels that watershed monitoring issues need additional clarification.

ERP No. F-BOP-F81015-IL, Pekin Federal Correctional Institution, Construction and Operation, Tazewell County, IL.

Summary: EPA has no objections to the project as proposed as long as the actions discussed are included as commitments in the Record of Decision.

ERP No. FS-DOE-A22076-NM, Waste Isolation Pilot Plant Construction, Updated Geological and Hydrological Information, Eddy County, NM.

Summary: EPA pointed out that there are some regulatory requirements that must be met for the project, and also that a few of EPA's comments on the draft supplement EIS were misunderstood or not answered satisfactorily.

ERP No. F-FAA-F51037-MI, Detroit Metropolitan Wayne County Airport, Construction and Extension, Airport Layout Plan, Approval and Funding, Wayne County, MI.

Summary: EPA still has major concerns regarding the project's noise impacts on the surrounding communities and impacts to wetlands. EPA requests the opportunity to review the draft Record of Decision.

ERP No. F-FHW-F40293-IN, East Unit Access Road Construction, I-94 to US 12, US 12 Relocation, LaPorte/Porter County Line to US 12 Intersection near Sheridan Avenue, Funding 404 Permit, Michigan City, Porter and LaPorte Counties, IN.

Summary: EPA expressed continued concern about the project's potential impacts on wetlands and recommended the preparation of a mitigation plan that will adequately provide compensation for wetland losses.

Regulations

ERP No. R-HUD-A85042-00, 24 CFR parts 50, 55, 58, and 200; Procedures for the Implementation of Executive Orders 11988 and 11990; Revision of Minimum Property Standards for One and Two Family Dwellings [55 FR 396].

Summary: EPA expressed concerns regarding the consistency of the proposed regulations with the requirement of section 404 of the Clean Water Act.

Dated: March 20, 1990.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 90-6691 Filed 3-22-90; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3747-9]

Environmental Impact Statements: Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed March 12, 1990 Through March 16, 1990. Pursuant to 40 CFR 1506.9.

EIS No. 900093, Draft, AFS, CA, Lake of the Sky Interpretative Center, Site Selection with the Sixty-Four Acres Tract, Tahoe City, Lake Tahoe, Placer County, CA, Due: May 7, 1990, Contact: Robert A. McDowell (916) 573-2600.

EIS No. 900094, Draft, AFS, CA, Mt. Shasta Wilderness Management Plan, Shasta-Trinity National Forests, Implementation, Mt. Shasta Ranger District and McCloud Ranger District, Siskiyou County, CA, Due: May 7, 1990, Contact: Garry Oye (916) 246-5222.

EIS No. 900095, FSuppl. AFS, OK, AR, Ouachita National Forest, Amended Land and Resource Management Plan, Updated and Additional Information

with emphasis on the issue of Even-Age and Uneven-Age Management, Implementation, LeFlore and McCurtain Counties, OK and Several, AR, Due: April 23, 1990, Contact: R. Gary Pierson (501) 321-5202.

EIS No. 900096, Final, OSM, TN, Flat Fork and Mud Creek Watershed Surface Coal Mining Operations, Unsuitable Land Designation, Approval, Morgan County, TN, Due: April 23, 1990, Contact: Joe B. Maddox (617) 673-4356.

EIS No. 900097, Draft, FAA, CO, Colorado Springs Municipal Airport Expansion, Construction of Runway 17L-32R parallel to existing Runway 17R-35L, Construction and Operation, Funding, City of Colorado Springs, CO, Due: May 7, 1990, Contact: Barbara Johnson (303) 286-5527.

EIS No. 900098, Final, DOE, CO, Old and New Rifle Uranium Mill Sites Remedial Actions, Contaminated Material Cleanup, Garfield County, CO, Due: April 23, 1990, Contact: Carol Borgstrom (202) 586-4600.

EIS No. 900099, Final, FHW, PA, Uniontown Bypass/PA-6040 (Section A04) Construction, US 40 in Hopwood to US 119 near Chadville, 404 Permit and Funding, South Union Township, Fayette County PA, Due: April 23, 1990, Contact: (717) 782-3411.

EIS No. 900100, Final, SFW, CA, Stephens' Kangaroo Rat Incidental Take, Section 10(a) Permit, Cities of Riverside, Moreno Valley, Lake Elshinore, Hemet and Perris, Riverside County, CA, Due: April 23, 1990, Contact: Pete Stine (714) 643-4270.

Dated: March 20, 1990.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 90-6692 Filed 3-22-90 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 19, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB number: 3060-0055

Title: Application for Cable Television Relay Service Station Authorization

Form number: FCC Form 327

Action: Revision

Respondents: Individuals or households, state or local governments, businesses or other for-profit (including small businesses), and non-profit institutions

Frequency of response: On occasion

Estimated annual burden: 1,400

responses; 4,200 hours

Needs and uses: FCC Form 327 is used by cable television owners or operators and cooperative enterprises owned by Cable TV owners or operators when applying for Cable TV Relay Service (CARS) Station, Modification of License, Reinstatement, Amendment, Transfer of Control, Assignment of License, and Renewal of License. The data is used by the FCC staff to determine whether applicant meets basic statutory requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-6609 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

[DA 90-422]

Declaratory Ruling Request; American Radio Relay League

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the American Radio Relay League, Incorporated (ARRL) has filed a *Request for Issuance of Declaratory Ruling* requesting that the Commission preempt, on the basis of federal jurisdiction, certain state statutes and local ordinances affecting transceivers used by amateur service operators. The Commission seeks comment on this issue.

DATES: Comments should be filed by May 16, 1990. Reply comments should be filed by May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Private Radio Bureau, (202) 632-7175.

March 15, 1990.

American Radio Relay League (ARRL) Requests Federal Preemption of State Laws Concerning Amateur Transceivers Capable of Receiving Law Enforcement and Other Signals, Comments Requested

On November 13, 1989, the American Radio Relay League, Incorporated (ARRL) filed a *Request for Issuance of Declaratory Ruling* requesting that the Commission preempt, on the basis of federal jurisdiction, certain state statutes and local ordinances affecting transceivers used by amateur service operators. In its request, the ARRL cites various statutes and ordinances, many directed toward radio reception within automobiles, that have the effect of prohibiting ownership of amateur station transceivers that are capable of reception on frequencies used for law enforcement and other public safety activities. The ARRL states that, to facilitate adequate reception of the end frequencies of amateur service frequency bands, the receivers of commercially available amateur station transceivers typically overlap the ends of the amateur service bands. The ARRL views this additional reception as technically justifiable and as merely incidental to authorized amateur service frequency band reception. The ARRL seeks a Commission declaratory ruling preempting the statutes and ordinances in question.

The Private Radio Bureau seeks comment on this issue. To file comments, please file an original and two copies at the following address: Chief, Special Services Division, Federal Communications Commission, 2025 M Street, NW., Room 5322, Washington, DC 20554. Comments should be filed by May 16, 1990. Reply Comments should be filed by May 31, 1990. Comments and reply comments should refer to: ARRL Declaratory Ruling Request.

Copies of the ARRL's *Request for Issuance of Declaratory Ruling*, as well as any documents filed in this matter, may be obtained from the Commission's copy contractor, International Transcription Services, Inc., at the following address and telephone number: ITS, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800. These documents may also be inspected at Room 5322, noted above.

For further information, please contact Eric Malinen at (202) 632-7175.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-6603 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1812]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

March 20, 1990.

Petitions for reconsideration have been filed in the Commission's rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC., or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed April 9, 1990. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Public Safety Communications Plan for the Southern California Area—Region 5. (GEN 89-97) Number of Petitions filed: 1.

Subject: Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations. (Casa Grande, Claypool and Kearny, Arizona) (MM Docket No. 89-75 RM-6556 and 6629) Number of Petitions filed: 1.

Subject: Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations. (Waldron, Arkansas) (MM Docket No. 89-249) Number of Petitions filed: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-6610 Filed 3-22-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-860-DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-860-DR), dated March 6, 1990, and related determinations.

DATES: March 6, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated March 6, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from a severe ice storm on February 14-15, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93-288, as amended by Public Law 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gary Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

The counties of Champaign, Douglas, Edgar, Ford, Iroquois, Livingston, McLean, Moultrie, Piatt, Vermilion.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90-6672 Filed 3-22-90; 8:45 am]

BILLING CODE 6710-02-M

[FEMA-859-DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-859-DR), dated February 28, 1990, and related determinations.

DATED: March 12, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated February 28, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 1990: Perry County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-6673 Filed 3-22-90; 8:45 am]

BILLING CODE 6710-02-M

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA-858-DR), dated February 27, 1990, and related determinations.

DATED: March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Tennessee, dated February 27, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 27, 1990: Marion County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 9-6674 Filed 3-22-90; 8:45 am]

BILLING CODE 6710-02-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1250.

Name: Adolfo Ferrer Luchessi.

Address: Box 2092 Old San Juan Station, P.R. 00903.

Date Revoked: November 15, 1989.

Reason: Failed to maintain a valid surety bond.

License Number: 3153.

Name: United Global Services, Inc.

Address: 1303 Meade Lane, Arlington Heights, IL 60004.

Date Revoked: December 12, 1989.

Reason: Surrendered license voluntarily.

License Number: 48.

Name: Norman Gene Elisberg dba Lafayette Shipping Company.

Address: One World Trade Center, Suite 1215, New York, NY 10048.

Date Revoked: December 29, 1989.

Reason: Surrendered license voluntarily.

License Number: 2705.

Name: Americargo International, Inc.

Address: 830 Supreme Dr., Bensenville, IL 60106.

Date Revoked: January 9, 1990.

Reason: Failed to maintain a valid surety bond.

License Number: 1009.

Name: The Baltimore Grain Forwarders, Inc.

Address: 314 Chamber of Commerce Bldg., Baltimore, MD 21202.

Date Revoked: January 13, 1990.

Reason: Failed to maintain a valid surety bond.

License Number: 2348R.

Name: Accelerated Shipping Corp.

Address: 54 Stone Street, New York, NY 10004.

Date Revoked: January 28, 1990.

Reason: Failed to maintain a valid surety bond.

License Number: 1820.

Name: Bucano International Traffic Management.

Address: 4927 Camelot Dr., Suite B, New Orleans, LA 70127.

Date Revoked: January 31, 1990.

Reason: Surrendered license voluntarily.

License Number: 1377.

Name: United Aero Marine Services, Inc.

Address: 19 W. 34th Street, Suite 1022,
New York, NY 10001.

Date Revoked: February 1, 1990.
Reason: Failed to maintain a valid
surety bond.

License Number: 2019.

Name: Luciano S. Soto.

Address: 9826 McCullough Ave., San
Antonio, TX 78216.

Date Revoked: February 1, 1990.
Reason: Failed to maintain a valid
surety bond.

License Number: 397.

Name: Zanelli Forwarding, Inc.

Address: 512 W. Crosstimbers, Houston,
TX 77018.

Date Revoked: February 1, 1990.
Reason: Failed to maintain a valid
surety bond.

License Number: 819.

Name: Aeolian Shipping Co., Inc.

Address: One World Trade Center, Suite
1543, New York, NY 10006.

Date Revoked: February 2, 1990.
Reason: Failed to maintain a valid
surety bond.

License Number: 3057.

Name: United Trading and Shipping, Inc.

Address: 5881 Leesburg Pike #302, Falls
Church, VA 22041.

Date Revoked: February 18, 1990.
Reason: Failed to maintain a valid
surety bond.

License Number: 2927.

Name: Sunshine Loading Service, Inc.

Address: 1 World Trade Center, Suite
1543, New York, NY 10048.

Date Revoked: February 8, 1990.
Reason: Failed to maintain a valid
surety bond.

License Number: 1480.

Name: Waldron-Bowers, Inc.

Address: 5212 Ala Moana Boulevard,
#210, Honolulu 96813.

Date Revoked: February 15, 1990.
Reason: Failed to maintain a valid
surety bond.

License Number: 595.

Name: M. H. Garvey Company.

Address: 148 State Street, Boston, MA
02109.

Date Revoked: February 15, 1990.
Reason: Failed to maintain a valid
surety bond.

License Number: 1402.

Name: Bailey Foreign Freight
Forwarding, Inc.

Address: 3444 Ellicott Center, Dr., Suite,
104, Ellicott City, MD 21403.

Date Revoked: February 22, 1990.
Reason: Failed to maintain a valid
surety bond.

Bryant L. VanBrakle,

Acting Director, Bureau of Domestic
Regulations.

[FR Doc. 90-6601 Filed 3-22-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Mid Am, Inc.; Aquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 1990.

A. Federal Reserve Bank of Cleveland
(John J. Wixted, Jr., Vice President) 1455
East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to acquire 100 percent of the voting shares of Home Savings and Loan Association, Defiance, Ohio, and thereby engage in savings and loan activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve
System, March 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 6653 Filed 3-22-90; 8:45 am]

BILLING CODE 6210-01-M

Mitsubishi Trust and Banking Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the world.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 1990.

A. Federal Reserve Bank of New York
(William L. Rutledge, Vice President) 33
Liberty Street, New York, New York
10045:

1. Mitsubishi Trust and Banking Corporation, Tokyo, Japan; to acquire a limited partnership stake in a *de novo* joint venture, BC Capital Partners L.P., Las Vegas, Nevada, with Spectrum Capital, Ltd., New York, and The Boeing Company, Seattle, Washington, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others pursuant to § 225.25(b)(1); and leasing personal or

real property or acting as agent broker, or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6654 Filed 3-22-90; 8:45 am]

BILLING CODE 6210-01-M

Montfort Bancorporation, Inc. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 11, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Montfort Bancorporation, Inc.*, Platteville, Wisconsin; to acquire 100 percent of the voting shares of *Clare Bancorporation, Inc.*, Platteville, Wisconsin, and thereby indirectly acquire *The Bloomington State Bank*, Bloomington, Wisconsin; *State National Bank of Platteville*, Platteville, Wisconsin; *The First National Bank of Boscobel*, Boscobel, Wisconsin; and *Farmers and Merchants Bank*, Shullsburg, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Reelfoot Bank Employee Stock Ownership Plan*, Union City Tennessee;

to become a bank holding company by acquiring 27.25 percent of the voting shares of *Reelfoot Bancshare, Inc.*, Union City, Tennessee, and thereby indirectly acquire *Reelfoot Bank*, Union City, Tennessee, and *Fulton Bank*, Fulton, Kentucky.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *F and M Bank Services, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of *Farmers and Merchants State Bank*, Derby, Kansas.

2. *Prairie Capital, Inc.*, Augusta, Kansas; to acquire 100 percent of the voting shares of *Haysville Bancshares, Inc.*, Haysville, Kansas, and thereby indirectly acquire *First National Bank*, Haysville, Kansas.

Board of Governors of the Federal Reserve System, March 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6655 Filed 3-22-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3280]

Black & Decker (U.S.) Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Towson, Md. based manufacturer of small appliances from representing that any consumer product is endorsed by a person, group or organization that is an expert, unless the endorser has the expertise that is represented and the endorsement is supported by a valid evaluation or test.

DATES: Complaint and Order issued January 10, 1990.¹

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3153.

SUPPLEMENTARY INFORMATION: On Friday, November 3, 1989, there was published in the *Federal Register*, 54 FR 46460, a proposed consent agreement

with analysis in the Matter of Black & Decker (U.S.) Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 90-6595 Filed 3-22-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkts. C-3271, C-3272, C-3273, C-3274, C-3275, C-3276, C-3277, C-3278, C-3279]

Cleveland Oldsmobile Connection, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

In the matter of: *Cleveland Oldsmobile Connection*; *Dowd Oldsmobile, Inc.*; *Earl Oldsmobile, Inc.*; *Fred Stecker Oldsmobile, Inc.*; *Ganley Oldsmobile, Inc.*; *Gene Norris Oldsmobile-GMC, Inc.*; *Hern Oldsmobile-GMC Truck, Inc.*; *Reliable Oldsmobile, Inc.*; *Zalud Oldsmobile, Inc.*; *Prohibited Trade Practices*, and *Affirmative Corrective Actions*.

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the nine consent orders prohibit, among other things, eight Ohio Oldsmobile dealers and their association from entering into or enforcing any agreement restricting the advertising of prices, terms or conditions of sale or lease of any motor vehicle.

DATES: Complaint and Order issued January 8, 1990.¹

FOR FURTHER INFORMATION CONTACT: Brenda Doubrava, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., Suite 520-A, Cleveland, Ohio 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: On Friday, October 20, 1989, there was published in the *Federal Register*, 54 FR 43128, a proposed consent agreement

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

with analysis in the Matter of Cleveland Oldsmobile Connection, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaints in the form contemplated by the agreement, made its jurisdictional findings and entered its orders to cease and desist, as set forth in the proposed consent agreement, in disposition of these proceedings.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 90-6596 Filed 3-21-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Model Comprehensive Treatment Programs for Critical Populations

Office: Office for Treatment Improvement, ADAMHA, HHS.

Action: Request for Applications for Model Comprehensive Treatment Programs for Critical Populations.

Introduction/Purpose: The Office for Treatment Improvement (OTI) is announcing a grant demonstration program to assist States and communities in enhancing existing drug abuse treatment programs for specific population sub-groups (herein referred to as Critical Populations), with the ultimate goal of improving treatment outcome for these populations. The critical populations under this announcement are adolescents, racial/ethnic minorities and residents of public housing projects.

OTI is undertaking this program in its role of implementing demand reduction programs for the National Drug Control Strategy, and under statutory authority of Section 509G(b) of the Public Health Service Act, as enacted by Pub. L. 100-690, the "Anti Drug Abuse Act of 1988". Awards will be made to States only, in accordance with this authority, and only for specific treatment improvement projects proposed in the State's application and approved by OTI. Each State must submit a single, consolidated application for all proposed projects in the State. However, it is expected that individual, community based treatment

improvement projects will be developed primarily by local treatment programs and agencies.

OTI's operating philosophy is that addiction is a chronic relapsing disorder and that addiction treatment is most successful when providers offer a continuum of comprehensive therapeutic services, coupled with a readily accessible post-treatment after care program. It is anticipated that treatment outcome should improve markedly for patients who are treated in "model" comprehensive treatment programs of this type.

To this end, OTI will provide grants to States to fund improvements to specific projects in programs that currently deliver services to critical populations, in order to bring these programs up to the model standard. Grants awarded under this announcement are targeted towards the improvement of existing programs, as opposed to the creation of new programs, which will not be funded.

Applications must address, for each proposed project, how existing services, along with proposed improvements, will serve all the complex and varied needs of the target population(s), and must specify which is the primary targeted population applied for. These needs can be broadly categorized as:

(1) Biological/physical (e.g., primary health care, detoxification, HIV/AIDS testing, counseling and treatment);

(2) Psychological (e.g., treatment for anxiety, depression and other psychiatric disorders that co-occur frequently with addiction, low self-esteem);

(3) Instrumental (e.g., child care, transportation to facilitate the receipt of services, shelter);

(4) Informational, vocational, and educational (e.g., educational training, vocational rehabilitation); and

(5) Social, cultural (e.g., development of social and life skills and other adaptive behaviors to enable patients to cope with, and feel a part of, society).

Covered Populations

While many population groups could benefit from additional financial aid for treatment of drug abuse, certain groups are facing such critical health and socioeconomic difficulties as a result of their drug abuse as to characterize them as critical populations. The critical populations that are to be the focus of this grant program are drug abusers who are:

Adolescents: included in this group are youngsters between the ages of 10 and 18 and young adults aged 19 to 22.

Racial/Ethnic Minority Populations: Blacks, Hispanics (including Central and South Americans, Puerto Ricans,

Cubans, and all other Hispanic populations), Native Indians, Native Alaskans and Asian Pacific Islanders.

Residents of Public Housing Projects: Individuals who are permanent legal residents of public housing projects (housing units or developments that are subsidized by local and/or federal governments).

In addition to the requirements of focusing on one or more of the critical populations listed above, OTI is particularly interested in proposed projects that address the following "special" sub-groups for these critical populations:

- Homelessness. Programs designed to treat members of one or more of the above-stated critical population(s) who are homeless or at imminent risk of becoming homeless are encouraged to apply. This sub-group includes persons who lack a fixed, regular, and adequate night time residence. It also includes individuals whose primary night time residence is either a supervised public or private shelter designed to provide temporary living accommodations, an institution that provides a temporary residence, or a public or private place not designed for or used as a regular sleeping accommodation for human beings. At imminent risk of becoming homeless are those who are temporarily and/or inadequately housed in a residence that is not their own (including individuals about to be discharged from residential treatment programs) and who might be a high risk for being homeless.

- Co-occurrence of drug addiction with one or more of: alcoholism, physical health disorders and/or diseases (as in the case of HIV-infected/AIDS patients), or mental health disorders.

- Rural Populations: In areas where: (1) Demand for drug treatment exceeds capacity; (2) there is a high prevalence of drug abuse, and (3) there is a high incidence of drug related criminal activities.

It is anticipated that the individual projects supported under this program may serve as demonstration models for improvement of treatment services for critical populations in other parts of the country. Accordingly, evaluation will be an important part of this program and applications will be assessed for their potential ability to be replicated in other sites.

Program Goals

The goal of this critical populations demonstration grant program is to fund drug abuse treatment improvement projects which, together with existing

treatment services and systems in a given treatment environment, could eventually become national prototypes for effective drug treatment programs. OTI considers that effective drug treatment programs should endeavor to:

- Increase patient accessibility to a broad spectrum of health, mental health, social, educational and vocational services and leisure time activities (health includes generalized and specialized services including primary medical care, HIV/AIDS services, and acute care as appropriate for the population being served);
- Improve the overall health of persons in treatment;
- Increase treatment program retention rates;
- Decrease the recidivism rate of persons in drug treatment;
- Reduce the incidence of illicit drug use among patients;
- Reduce patient conflict with the criminal justice system;
- Improve patient self-sufficiency;
- Enable patients, together with their families and significant others, to lead productive lives;
- Reduce the negative stigma associated with drug treatment services for both patients and personnel; and
- Increase patient self-esteem

Each proposed drug treatment improvement project included in a State's application must address one or more of these goals, as necessary, depending upon the treatment program/system components already in place and the particular needs of the patient population(s), to create an effective comprehensive drug treatment environment.

Eligibility Requirements

In accordance with Section 509(G)(b) of the Public Health Service Act, only States are eligible to receive awards under this announcement. For purposes of this announcement, "State" is defined as the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Successor States to the Trust Territory of the Pacific Islands (the Federal States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). The Governor shall designate in writing the State agency to be the applicant/grantee for this program.

In accordance with the goal of this program to improve treatment for critical populations by establishing model comprehensive treatment programs, States may submit applications only for specific treatment improvement projects to be carried out

by local provider organizations identified in the application.

Applications must contain all required information for each project for which funds are being sought. The State will be the grantee; the programs administering specific treatment improvement projects will be the sub recipients.

Proposed sub recipients are limited to those organizations already providing drug treatment¹ services to the critical populations targeted in this announcement. The reason for this limitation is the pressing need to improve the quality and effectiveness of services to these populations. Hence, OTI wishes to focus funding under this program on the development and evaluation of treatment improvement strategies which can be implemented immediately. Treatment program expansion is appropriately funded using other funding vehicles (such as the Alcohol, Drug Abuse, and Mental Health Services Block Grant and various State and local funding sources).

Treatment improvement projects may be based in any appropriate setting, e.g., community-based treatment programs, HMO's, or community health centers and may be providers of outpatient, inpatient and/or residential drug abuse services.

The application must demonstrate that each proposed sub recipient meets the following conditions:

(1) The sub recipient must be using an intake assessment protocol which consists of a medical exam, drug use history, and psycho-social evaluation for all patients entering the program. Assessments must be tailored to the specific needs of the critical population and appropriate for evaluating all patients with respect to drug use, alcohol use, physical and mental health problems.

(2) Sub recipients must have provided treatment services to the target population(s) for at least 2 years.

(3) Sub recipients must currently be providing the following "baseline," population-specific treatment services:

For Adolescents

- Basic Substance Abuse Counseling
- Primary Medical Care (on site or through formal referral arrangements)
- Family/Collateral Counseling
- Educational Counseling

For Racial and Ethnic Minority Populations

- Basic Substance Abuse Counseling

¹ Grants are not available under this announcement for improvement of alcohol treatment, except in the context of providing services to drug abusing persons who are dually diagnosed (e.g., drug abuse and alcohol problems).

- Family/Collateral Counseling
- Life Skills Training

For Residents of Public Housing Projects

- Basic Substance Abuse Counseling
- Family/Collateral Counseling
- Linkages to educational/vocational training

(4) The sub recipient must have in place acceptable policies and procedures for case documentation, i.e., record keeping procedures, patient monitoring and tracking systems, etc.

(5) Coordination of services is a requirement for this grant program. This includes documentation (letters of agreement) of coordination between proposed sub recipients and appropriate local drug, alcohol, HIV-related service agencies, the State mental health and public health programs.

(6) The sub recipient's program must operate in an area:

(A) in which a demand for drug treatment services exists, or a need for such services exists which exceeds the capacity of organizations operating in that area to provide such services;

(B) that has a high prevalence of drug abuse; and

(C) that has a high incidence of drug related criminal activities.

In addition, the State must certify in the application that each proposed sub recipient has provided services to the particular critical population(s) addressed in the project for at least 2 years. The State also must certify that each proposed project is consistent with current State treatment plans.

OTI does not support research or research demonstrations. Accordingly, applications using rigorously controlled comparative experimental designs for the purpose of assessing the efficacy of particular interventions are more appropriate for the National Institute on Drug Abuse (NIDA) or the National Institute on Alcohol Abuse and Alcoholism (NIAAA). Projects that focus on prevention strategies or early intervention or on comprehensive treatment and prevention programs for pregnant women and their infants are more appropriate for the Office for Substance Abuse Prevention (OSAP).

NIAAA, NIDA, OSAP, OTI, or the National Institute of Mental Health for the same programmatic activities in the same program and/or the same patient population. For further information on the above grant programs, call the

National Clearinghouse for Alcohol and Drug Information, (301) 368-2600.

Activities for Which Grant Support is Available

The primary focus of this program is to enhance substance abuse treatment services. To the extent possible, enhancement should be achieved through utilization of existing community based services.

Examples of specific strategies that may be included in individual proposed projects are listed below. Support may be requested in a given project for one or several of these approaches to treatment improvement, as required, in order to result in a "model" comprehensive array of services for the target critical population in a particular community based program (see section labeled Model Treatment Environments). Proposed strategies should be consistent with the programmatic goals stated in the "Goals" section in this announcement.

Enhancement of Service Strategies

- Addition of services which are seen as necessary to improve the quality and success of treatment for the target populations within a program. As stated elsewhere in this announcement, it is presumed that availability of a comprehensive range of drug treatment and related health and human services has a beneficial impact on treatment outcome and patient welfare. Funds may be requested for proposed projects to add additional service components [personnel and/or material resources] to existing treatment programs in order to achieve this goal. See "Model Treatment Environments" section for exemplary description of comprehensive array of service components for the critical populations covered by this announcement.

- Improving the staff-to-patient ratio so that more intensive interaction with patients can help to ensure retention in, and success of, treatment.

- Development and implementation of treatment manuals for staff and standards for measuring treatment effectiveness.

Service Delivery Strategies

- Coordination with other likely points of access for the target population (e.g., schools, churches, community health centers, AIDS outreach programs and HIV service agencies and programs, public housing, courts, jails, recreation facilities) for purposes of identification of patients in need of services.

- Involvement of significant others (e.g., siblings, parents, spouse, partner, friends) to: aid in outreach to bring

persons into treatment, assist in the treatment process, and/or ensure retention in treatment and aftercare.

- Development of culturally and ethnically relevant outreach strategies to get drug abusers into treatment, especially hard to reach populations.

- Increased accessibility and facilitation of service delivery through the development/expansion of satellite centers or extension services.

- Improvements in intake, diagnosis and referral to permit more comprehensive assessment of the needs of individual patients.

- Innovative approaches to improving case management and aftercare so as to increase the chances for success of treatment.

- Improvements to facilities which could contribute to improved patient and staff recruitment, retention and self-esteem [may include recreational facilities].

- Improved coordination of the treatment program with and among all appropriate health, human services, education, criminal justice and vocational training agencies, with emphasis on: 1) strengthening interagency referral relationships; 2) developing effective patient tracking mechanisms; and 3) improving patient tracking mechanisms; and 4) improving case coordination and management in and among all affected organizations.

- Improved patient compliance with treatment protocol (e.g., random urine testing for presence of illicit substances; awarding of privileges or administration of sanctions for patients who do/do not comply with their treatment protocol).

Personnel Strategies

- Job-specific training, continuing education, and seminars for professionals and other staff of the treatment program(s). Training should be aimed at providing information regarding the latest findings on efficacy of treatment and/or skills needed to carry out specific service delivery improvement objectives. Support is not available for training programs per se to provide basic skills training to increase the pool of trained drug treatment personnel.

Note: The Office for Substance Abuse Prevention (OSAP) is developing a National Training System to meet the needs for initial training and continuing education of drug abuse treatment and prevention personnel. For further information contact Steven Seitz on (301) 443-5276.

- Innovative strategies for recruitment and retention of staff (e.g., job restructuring, benefit package restructuring, performance and incentive plans and employee wellness programs).

- Inter-organizational personnel exchange for the creation of interdisciplinary teams which would promote a comprehensive and coordinated approach to providing drug treatment and related health and human services.

Meeting Participation

Applicants and proposed sub recipients shall include in the budget funds for attendance at one national technical assistance meeting.

Model Treatment Environments

The treatment service components that are inherent in a comprehensive model treatment environment are listed below. Most, if not all, of these components are appropriate for every one of the critical populations covered under this announcement. Methods of implementing these components, the staff delivering each service, the style with which services are delivered, etc. are expected to vary depending upon the needs of patients in treatment.

- Intake and assessment protocol which consists of a medical exam, drug use history, and psycho-social evaluation for all patients entering the program. Assessments must be appropriate for evaluating all patients with respect to drug use, alcohol use, and mental health problems. The assessment of eligibility (and subsequent registration) should include Medicaid, public assistance, and other statutory or health benefits, i.e. SSI, AFDC, Medicare.

- Same day intake services.
- Documented case finding.
- Appropriate pharmacotherapeutic interventions with concomitant assessment and monitoring by qualified medical staff.

- On-site provision of primary medical care for patients.

- Provision of, or established referral linkages for, acute medical care for patients.

- Testing for hepatitis, retrovirus, tuberculosis, HIV positivity/AIDS, and other sexually transmitted diseases.

- Appropriate psychotherapeutic interventions with concomitant assessment and monitoring by qualified psychiatric and medical staff. These interventions are particularly appropriate for the homeless and for any patient group with a relatively high incidence of mental health disorders (comorbidity).

- Counseling for HIV positive/AIDS-infected patients. Special attention to services for HIV+ persons is warranted because of the strong association

between HIV infection and intravenous drug use.

- Initial and random, at least weekly, urine testing for drugs including heroin, cocaine/crack, marijuana, methamphetamine, and others.

- Basic substance abuse counseling.
- Family/collateral counseling provided by persons recognized by State/local authorities to provide family therapy.

- Practical life skills counseling.
- Coordination of drug abuse treatment services with other germane services, agencies and organizations, such as Vocational Rehabilitation, Education, Criminal Justice, Legal Aid, Bureau of Indian Affairs, transportation; coordination includes coordinated case management and follow-up.

- Nutritional and general health education provided by a qualified technician.

- Sustained aftercare and follow-up, including [for residential programs] drug-free cooperative living arrangements as a component of aftercare.

- Peer/support group forums.

- Child care provision at the treatment facility.

- Liaison and intervention with criminal justice system, immigration, etc.—as appropriate.

- Health, Substance Abuse, Sex and HIV/AIDS education and counseling, including family planning and contraception counseling and education (should include pregnancy prevention for adolescents).

- Support groups for HIV positive patients.

- Psychological counseling provided by persons recognized by State/local authorities to provide this form of therapy.

- Vocational evaluation, counseling and linkages to appropriate training programs in the community (e.g., mentor program with local businesses in the community to assist individuals in obtaining employment).

Period of Support

Support must be requested for a three year project period. Annual awards and the continuing eligibility of any sub recipient will be made subject to continued availability of funds and progress achieved.

Availability of Funds

In FY 1990, it is estimated that approximately \$25 million will be available to support, through grants to States, 50 to 75 individual treatment improvement projects under this announcement. It is expected that

individual project funding needs will vary widely.

Executive Order 12372 (Intergovernmental Review)

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through Department of Health and Human Services Regulations at 45 CFR Part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of SPOCs will be included in the application kit [applicants should note that comments received from the State may be considered as a factor in the review of their applications]. SPOC comments must be received by August 1, 1990 and should be sent to: Office for Treatment Improvement, Technical Resources, Inc., P.O. Box 409, Rockville, MD 20848-0409.

OTI does not guarantee to accommodate or explain comments from the SPOC that are received after the 60 day period.

Application Process

Applicants should use form PHS 5161-1 (Rev. 3-89). The title of the RFA, Model Comprehensive Treatment Programs for Critical Populations, should be typed in item number 9 on the face page of the Application for Federal Assistance (Standard Form 424) in PHS 5161-1. Application kits containing the necessary forms and instructions may be obtained from: Office for Treatment Improvement, Technical Resources, Inc., P.O. Box 409, Rockville, MD 20848-0409.

The applicant agency must submit a cover letter listing all projects included in the application. Each individual project must certify that it has been providing services to the target population(s) for at least two years and that the proposed project is consistent with State treatment plans. The State must also file one form PHS 5161-1 with consolidated budget information for all projects and the face sheet from Standard Form 424. In addition, a separate budget sheet and a separate Program Narrative must be submitted for each project.

The signed original and two copies of the form PHS 5161-1 should be sent to: Office of Treatment Improvement, Model Comprehensive Treatment Programs for Critical Populations,

Technical Resources, Inc., P.O. Box 409, Rockville, MD 20848-0409.

All information provided in applications must be accurate and truthful to the best of the applicant's knowledge, under penalty of all applicable Federal laws and regulations.

Application Characteristics for Individual Projects

At the beginning of the narrative for each project, applicants must indicate: (1) The name of the treatment program involved; (2) the title of the organization or agency primarily responsible for the project; and (3) the name of the project director. The narrative section of the Application Form PHS 5161-1 should be written in a manner that is self-explanatory to outside reviewers unfamiliar with prior related activities of the applicant. It must be well-organized and contain the information necessary for reviewers to understand the project. For each project, sections A-E may not exceed a total length of 25 single-spaced pages; and Sections F, G and H may not exceed a total length of 10 pages. Applications exceeding these page limits (for the narrative section) will not be accepted for review. The page limit will be rigorously enforced. Appendices may be attached for technical or specialized materials, or letters of support, but should not be used merely to extend the narrative. Appendices must be clearly labelled to identify the particular project they are associated with.

Abstract—A single-spaced, 30-line or less abstract should precede the body of the narrative. It should: (1) State the particular critical population being addressed; (2) clearly present the grant application in summary form, from a "who-what-when-how-where" point of view; and (3) allow reviewers to see how the multiple parts of the application fit together to form a coherent whole.

Index Page—Immediately following the abstract page, the applicant is required to provide an index page identifying the page where each section of the outline begins. The sections on the index page are:

- A. Specific Aims.
- B. Background and Significance.
- C. Target Population.
- D. Approach/Method.
- E. Evaluation Plan.
- F. Confidentiality Requirements.
- G. Project Staffing, Management and Organization.
- H. Resources.

The following sections A-G replace the general instructions for completing the program narrative of the application form PHS 5161-1:

Note: The following information is required for each proposed project:

A. Specific Aims

Identify the goals and specific treatment improvement objectives for the proposed project and how these relate to the goals stated in this grant announcement (suggested length: one-half to one page).

B. Background and Significance

Demonstrate familiarity with and understanding of state-of-the-art practices and general knowledge regarding service delivery appropriate to the critical population(s). A brief review of the literature and of other related projects or studies, as well as any relevant prior work, observations, or experiences of the applicant should be included in this section. (Suggested length: 2-3 pages).

C. Target Population

This section should include a rationale, preliminary analysis and operational definition(s) of the target population(s) in the proposed project; a summary of current data on the target population(s) (e.g., incidence and/or prevalence of abuse, incidence of drug-related criminal activity, location, demographic and socioeconomic characteristics, minority composition); a discussion of available human services for the target population(s); and a discussion of the gaps and other problems in the accessibility, effectiveness and/or acceptability of treatment services for the target population(s). Describe how the applicant's program meets the requirements described in the Eligibility Requirements section of this announcement (use appendices for letters of agreement, etc., as appropriate).

D. Approach/Method

Discuss the approach to be used in conducting the proposed treatment improvement project. The following information must be provided:

- A description of all specific components of the treatment program (including agreements with other existing programs) which are to be the focus of the treatment improvement project; include as an appendix, a statement describing the mission and treatment philosophy of the program;
- Procedures for dealing with the difficult issues of identification, involvement, retention, and follow-up with these populations;
- Plans for special attention to be given to the unique needs and concerns of members of racial and ethnic minority

groups within the target population(s) where appropriate;

- A plan that describes activities which will be carried out to address the treatment improvement goals of the project; indicate how proposed activities, in conjunction with existing program components, will result in a comprehensive model program that will best serve the needs of the critical population; identify specific obstacles to improving coordination between community health and human services entities and how the project will overcome these hindrances;
- A plan of action that discusses how each activity related to the project will be approached and coordinated with existing programs (where appropriate), and implemented (program components should be related to information from the background section of the proposal, including needs, existing services, and previous accomplishments).

E. Evaluation Plan

As part of the grant application, applicants must submit a plan for a process evaluation of their treatment improvement projects. The process evaluation should be designed to address the following issues:

E. Evaluation Plan

As part of the grant application, applicants must submit a plan for a process evaluation of their treatment improvement projects. The process evaluation should be designed to address the following issues:

- Types of treatment services provided to patients; distinguish between existing services vs. enhancements provided under the grant program;
- Number of patients entering treatment during the treatment improvement project;
- Type of addiction and/or mental health problems for which the patients were treated;
- Racial, age, and gender characteristics of the patients;
- Cost per patient served;
- Innovative approaches that were used for outreach, treatment, community coordination, and aftercare (describe);
- New staff that were hired and their programmatic responsibilities;
- Type of in-service training that were offered to staff;
- Employee incentives utilized;
- Extent to which the grant project has been implemented as planned;
- Problems/solutions encountered during the grant project;
- How the grant project integrates with the larger system of care that potentially serves the target patient population; and
- Payor source for patient treatment (patient fees, private insurance, donations, Medicaid, Medicare, CHAMPUS, etc.).

OTI is planning a national evaluation for this grant program. Staff of individual treatment improvement

projects will be asked to work closely with the national evaluator and to provide data as requested. The primary organization responsible for each treatment improvement project must include a statement with their application indicating their agreement to participate in the national evaluation. The outcome measures that will be utilized during the course of the national evaluation will be developed by OTI in concert with the national contractor and the grantees. They will include, but not be limited to, the following:

- Incidence of patients' illicit drug use during treatment and aftercare;
- Patient socio-economic indicators (i.e. employment status, school performance and other objective wellness indicators) at admission, and during and after treatment;
- Incidence of patients' involvement with the criminal justice system;
- Health status of patients during and following treatment;
- Staff retention rates and self-reported satisfaction with the treatment program over the life of the grant period;
- Self-reported measures of patient satisfaction with the treatment program; and
- Impact on the community as a whole.

F. Confidentiality Requirements

Applicants should describe procedures used to ensure confidentiality and protection of clients in this section. Awardees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the regulations governing, "Confidentiality of Alcohol and Drug Abuse Patient Records," (42 CFR part 2). (Suggested length: 2-4 pages).

G. Project Staffing, Management and Organization

1. *Organizational Structure.* Provide a narrative description of the organizational structure of the proposed project. This description should clearly indicate the organizational relationships and responsibilities between the Project Director and each project unit or activity. List each staff person/position and indicate percentage of time to be devoted to the project by each staff position. Indication should be provided as to which positions require new hiring.

The responsibilities and composition of Boards of Supervisors, Directors, Trustees, and/or Advisors should be included, where applicable.

Provide a description of organizational relationships between the applicant and other State/local level

health and human services agencies as these relate to the proposed project. If the applicant agency is responsible to or receives program and/or management direction from a State, regional, or other office or agency, this relationship should be clearly described. An organizational chart should be provided which illustrates clear lines of both responsibility and authority.

If a multi-site project applies or application is made on behalf of more than one program in a single facility, it is important that the review panel be able to determine: (1) Lines of authority clearly in an organizational chart; (2) any differentiation of objectives between each site and/or program; and (3) coordination between all components of the project. It is required, at a minimum, that there be coordination of the project among alcohol, drug, mental health, and public health agencies (including HIV + service programs, where existent). Documents describing these relationships with all types of health and human service organizations involved in the project must be submitted with the application. Include in a labeled appendix, copies of letters and/or other documentation of specific commitments of support and participation in the project project.

Describe coordination with the single state drug treatment agency and include as an appendix, a copy of the endorsement letter from the state (see "Program Requirements" section).

2. Organizational Capability. Provide evidence that the organization is capable of implementing the proposed project. Documentation of experience in similar or relevant activities, expertise in service delivery and evaluation, experience in developing and effectively using inter-organizational agreements, and other indications of capability should be provided as appropriate. The use of external expertise is encouraged when helpful (e.g., evaluation consultants) and should also be presented in this section.

3. Staffing Pattern. Staff experience and/or training pertinent to the proposed project should be highlighted in this section. Insert as a labeled appendix, biographical sketches for all key management positions in the treatment program, and all staff who will be assigned to this treatment improvement project.

Job descriptions must be submitted, as appendices, for each key position identified in the proposed budget. Only one job description needs to be submitted for identical positions. Job descriptions should include: job title, description of duties and responsibilities, qualifications for

position, supervisory relationships, skills and knowledge required, prior experience required, educational background required, and job site (if appropriate). Documentation should be provided to assure that staff loaned to the project from other units or agencies will be available for the amount of time required.

The narrative must include a brief section describing how staff will be recruited and selected, and whether any particular mix of background, skills, and/or personal qualities is proposed. The relationship of staff characteristics to the objectives of the treatment improvement project should be discussed.

Consideration must be given to the use of multi-disciplinary staff and staff representing the sexual, ethnic, and cultural characteristics of the population to be served.

4. Project Task Plan. The management plan must include a description of tasks to be performed, their sequence, performance schedule, and their relationship to each other. The accomplishment of these tasks should be related to the project goals and objectives, as well as to the management of the project. The level of effort required for each task also should be shown.

H. Resources

Describe the facilities, equipment, services, financial and other resources available to carry out the project.

Concrete plans for acquiring funding after Federal seed money has expired must be included in this section.

Financial resources available for the project and/or program must be described in an appendix labeled "Other Support." Other Support refers to all current or pending support related to this application. Applicants are reminded of the necessity to provide full and reliable information regarding pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS and could therefore lead to delay in the processing of the application.

For the primary organization and key organizations that are collaborating in the proposed project, list all currently active support and any applications/proposals pending review or funding that relate to the project. If none, state none.

For all active and pending support listed, also provide the following information:

1. Source of support, including identifying number and title.

2. Dates of entire project period.
3. Annual direct costs supported/requested.
4. Brief description of the project.
5. Whether project overlaps, duplicates, or is being supplemented by the present application; delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

Review Process

Applicants should be sure to submit completed applications. OTI staff may screen applications and their subcomponents (i.e., individual project applications) upon receipt and return those that are judged to be incomplete, non-responsive to this announcement or non-conforming (e.g., exceed the page limit or do not meet program requirements as stated in this announcement).

Applications judged to be conforming, responsive and competitive will be reviewed for technical merit in accord with the PHS and ADAMHA policies for objective review. The initial review group(s) (IRGs) will be composed primarily of non-Federal experts. OTI reserves the right to conduct the multi-stage review at one time or in two discrete steps. Notification of the review outcome will be sent to the applicant once the technical merit review groups have completed their reviews.

Review Criteria

Individual treatment improvement projects will be reviewed, rated, and ranked. Criteria for technical merit review of individual projects will include the following:

- (1) Relevance of project objectives to goals of the grant program, as stated in this announcement.
- (2) Extent of coordination with relevant State and/or local drug and alcohol abuse prevention, treatment, or rehabilitation programs, health care facilities (including HIV/AIDS related service agencies), community or voluntary groups, and/or other relevant programs and systems. There must be documentation of specific commitments and support from those organizations the applicant is coordinating with, as well as integration of the proposed treatment improvement project into the Statewide Drug Abuse Treatment Plans.
- (3) Extent to which the proposed program enhancements, together with the applicant's existing services, constitute a "model" approach to treatment for the critical population(s).
- (4) Potential for national significance of the proposed project in terms of developing an approach with

applicability and replicability elsewhere.

(5) Adequacy of plans for evaluating all clients concerning drug use, alcohol use, mental health problems and, as appropriate, HIV knowledge and sero status, and making appropriate referrals. This system must be documented in the application.

(6) Adequacy of approach to meet multiple needs of population(s) (at individual developmental stages and across stages) through service delivery and/or coordination of existing services.

(7) Evidence that the proposed project is ethnically, racially, and culturally relevant (for example, use of minority professional staff or staff that have received, or will receive, cross-cultural training).

(8) Clarity, feasibility, and appropriateness of evaluation plans.

(9) Capability and experience of project director, consultants, and other key staff proposed for the project and adequacy of staffing plan.

(10) Evidence of organizational capability relevant to the proposed project.

(11) Logic and feasibility of project management plan.

(12) Reasonableness of the proposed budget and efficacy of future funding plans.

Award Criteria and Process

Individual projects will be considered for funding primarily on the basis of overall technical merit of the project as determined by the review process. Other criteria may include:

(1) Focus on one or more of the target critical populations and "special" sub-groups.

(2) Geographic distribution of projects.

(3) Availability of funds.

(4) Program balance among target populations.

All or only some of the projects included in an approved State application may receive support, depending largely on the rating and ranking of each project. States will receive a Notice of Grant Award specifying which projects are being funded, and the State will be responsible for notifying individual programs.

Terms and Conditions of Support

States may use grant funds only to support the particular projects for which funding is provided by OTI. Further, funds may not be rebudgeted among projects by the State.

Given the urgent need to improve drug abuse treatment to critical populations, the States must obligate funds to subrecipients programs within 60 days

of this grant award. Further, no less than 98 percent of the total amount awarded must be allocated for treatment improvement programs performed by subrecipients. From any remaining funds, the State may recover up to its actual costs (but in no case more than 2 percent) of administration (direct and indirect costs) of the grant. However, should the grantee fail to make the subawards within the 60 day period specified above, the grantee must cost share all administrative costs under the grant and award 100 percent of the total grant to the subrecipients.

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including both direct costs which can be specifically identified with the project and allowable indirect costs of the organization.

Grant funds cannot be used to supplant current funding for existing activities, either at the grantee or the subrecipient levels. Allowable items of expenditures for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out activities under the approved project;
- Supplies, communications, and rental of space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support project activities.

• Alterations and renovations. Costs for alterations and renovations (A&R) will be allowable where such A&R is necessary for the success of the program subject to Public Health Service (PHS) Grants Policy Statement which states that, "The amount budgeted or used for A&R during three consecutive budget periods (whether or not the 3 years overlap two distinct competitive segments of support) cannot exceed the lesser of \$150,000 or 25% of the total funds reasonably expected to be awarded by PHS for direct cost for such three-year period. In addition, the maximum amount of PHS grant funds that may be spent for any single A&R project is \$150,000—regardless of the number of budget periods involved." Construction costs are not allowed.

Progress reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Grants must be administered in accordance with the "PHS Grants Policy Statement" (Rev. January 1, 1987).

Federal regulations at 45 CFR parts 74 and 92, generic requirements concerning

the administration of grants, are applicable to these awards.

Application Receipt and Review Schedule

Receipt date: June 1, 1990.

Initial review: July/Aug., 1990.

Earliest Start date: Sept. 1990.

Applications received after the above receipt date will not be reviewed and will be returned to the applicant.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Grant Product Ownership

All products developed with these grant funds (with the exception of publications in scientific journals) must be published in the public domain and may not be copyrighted, unless prior approval is obtained from the Grants Management Officer. In addition, such products must prominently state: "This document is in the public domain, is not copyrighted and may be duplicated and used without prior approval." Grantees are strongly encouraged to make such products widely available.

Contacts for Further Information

Questions concerning program issues may be directed to the individuals listed below:

Adolescents: Janice Berger, Telephone: (301) 443-6533

Racial/Ethnic Minority Populations: Warren Hewitt, Telephone: (301) 443-6533

Residents of Public Housing Projects: Donald Streater, Telephone: (301) 443-6533.

Correspondence to the above mentioned individuals should be addressed to: Office for Treatment Improvement, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857.

Questions concerning grants management issues may be directed to the office listed below: Mr. Joseph Weedas, NIAAA Grants Management Branch, Room 16-86 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4703.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Pub. L. 96-511, OMB Approval Number 0937-0189.

The Catalog of Federal Domestic Assistance number for this program is 13.902.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-6661 Filed 3-22-90; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 89N-0483]

Urethane in Alcoholic Beverages; Research and Survey Reports; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of reports submitted to FDA pursuant to agreements with the wine and distilled spirits industries. In these agreements, the industries promised to reduce urethane levels in certain alcoholic beverages to the lowest level technologically feasible, to conduct surveys of urethane levels in finished products at the point of production, and to perform research to elucidate the factors associated with findings of urethane in the finished beverages. The reports described the industries' progress under these agreements. FDA is also announcing the availability of results of analyses for urethane in alcoholic beverages performed by the Bureau of Alcohol, Tobacco and Firearms (BATF).

ADDRESSES: Submit written requests for single copies of urethane research and survey reports to the Regulations and Industry Activities Branch, Industry Activities Section (HFF-326), Food and Drug Administration, Rm. 5425B, 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The urethane research and survey reports are available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION: Urethane is a chemical compound that is known also by the synonyms "ethyl

carbamate," "urethan," and "carbamic acid ethyl ester." The carcinogenicity of urethane has been demonstrated in animals, and the compound is considered to be a potential human carcinogen.

In November 1985, FDA and BATF learned that the Government of Canada had found urethane in some alcoholic beverages. The Canadian government set regulatory limits on the amount of urethane in table wines, ports, sherries, distilled spirits, and brandies in December 1985.

In response to the Canadian actions, FDA and BATF instituted limited surveys to examine domestic and imported alcoholic beverages. These surveys confirmed that urethane was present in many products. The Cancer Assessment Committee of FDA's Center for Food Safety and Applied Nutrition reviewed toxicity data on urethane and concluded that the data were not sufficient to perform a meaningful assessment of the risk posed by urethane in alcoholic beverages to aid in risk management decisions. Consequently, FDA asked the National Toxicology Program (NTP) to initiate research to provide the toxicology data necessary to estimate the risk from urethane in alcoholic beverages. This research, initiated in January 1988, is continuing.

FDA and BATF met with industry groups, including the Distilled Spirits Council of the United States (DISCUS), the American Association of Vintners (AAV), and the Wine Institute (WI), to assess the problem and to request that the industry perform research on how to reduce urethane levels in all alcoholic beverages to the lowest level technologically feasible.

On December 24, 1987, FDA formally accepted a proposal by the DISCUS to reduce urethane levels in whiskey for all new production to 125 parts per billion (ppb) as of January 1, 1989. On January 25, 1988, FDA formally accepted a proposal by the WI and AAV, representing the wine industry, to reduce urethane levels in table wines and dessert wines. The latter agreement provides that, starting with the 1988 harvest, table wines containing 14 percent or less alcohol by volume will have a weighted average level of urethane of not greater than 15 ppb. Starting with the 1989 harvest, the agreement provides that the weighted average level of urethane in dessert wines (e.g., ports and sherries) containing more than 14 percent alcohol by volume will not exceed 60 ppb.

Since the mechanism leading to the formation of urethane in alcoholic beverages was not understood, both the

distilled spirits and the wine industries, as part of their respective programs, made commitments to conduct research appropriate to obtaining a better understanding of the causes of urethane formation and of the types of measures that can be taken to control its formation in alcoholic beverages.

The U.S. wine and distilled spirits industries, as part of their voluntary agreements with FDA, have been conducting surveys aimed at monitoring the urethane levels in their products at the point of production. FDA notes that the data submitted by the U.S. wine and distilled spirits industries indicate that they have met the goal set out in the agreements to reduce urethane levels in wine and distilled spirits. However, the original agreements between FDA and the industries assumed, among other conditions, that the amount of urethane, once it had formed, remained fixed.

More recently, FDA has been advised by the industries that some companies have found that urethane levels may increase over time (after distillation in the case of some distilled spirits and after fermentation in the case of wines). This phenomenon has been observed at some production facilities, but not others, and for some, but not all, batches. As a result, FDA has been working with the industries to revise their protocols to sample and analyze alcoholic beverages after initial production, including analyses of such products after bottling and storage, but before distribution. Therefore, FDA expects that future data will reflect urethane levels closer to those that may be in products when purchased by consumers.

The formation of urethane is not fully understood and may even differ with each type of alcoholic beverage. The U.S. wine and distilled spirits industries, however, have made significant progress toward understanding its formation. Results of studies presented by the wine industry concluded that urea, and natural byproduct of yeast metabolism, is the main precursor of urethane in wines. Based on these studies the wine industry has made recommendations to wine producers to reduce the formation of urea and urethane. The distilled spirits industry has also reported significant progress in reducing urethane as a result of implementation of recommended changes in distillation processes by many distilleries.

This notice announces the availability of reports submitted to FDA pursuant to the agreements to analyze alcoholic beverages for urethane at the point of production. Also available are the BATF analytical results for urethane in

alcoholic beverages in the marketplace. FDA notes that the BATF results represent random, nonstatistical sampling and include only a small fraction of the products available. In addition, urethane levels vary from batch to batch of the same product. For these reasons, the agency believes that the BATF data may not be typical of the level of urethane in these products.

FDA plans to continue to work closely with the distilled spirits and wine industries in their efforts to reduce urethane to the lowest level technologically feasible in their products. It also plans to continue to carefully monitor the results of the industries' sampling programs under the revised protocols. BATF will continue to analyze for urethane in alcoholic beverages in the marketplace.

Dated: March 16, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-6597 Filed 3-22-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0059]

Determination of Regulatory Review Period for Purposes of Patent Extension; Osmovist®

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Osmovist® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Klein, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical

device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Osmovist®, Osmovist® (iotrolan) is indicated in adults as an X-ray contrasting agent for lumbar, thoracic, cervical, and total columnar myelography, and computerized tomography of spinal and subarachnoid spaces. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Osmovist® (U.S. Patent No. 4,239,747) from Schering Aktiengesellschaft, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated February 15, 1990, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period. The letter also stated that the active ingredient, iotrolan, represented the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Osmovist® is 2,502 days. Of this time, 1,105 days occurred during the testing phase of the regulatory review period, while 1,397 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:

February 2, 1983. The applicant claims February 15, 1983, as the date the investigational new drug (IND) application for the drug became effective. However, FDA records indicate that the effective date was February 2, 1983.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: February 10, 1986. FDA has verified the applicant's claim that the new drug application (NDA) for the product (NDA 19-580) was initially submitted on February 10, 1986.

3. The date the application was approved: December 7, 1989. FDA has verified the applicant's claim that the NDA 19-580 was approved on December 7, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,942 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before (May 22, 1990), submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before (September 19, 1990), for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 16, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90-6598 Filed 3-22-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the National Arthritis Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board on April 22 and 23, 1990. The meeting will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The subcommittees will meet April 22, 7:30 p.m. to approximately 10 p.m. and the full board will meet April 23, 8:30 a.m. to approximately 5 p.m. The meetings, which will be open to the public, are being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Notice of the meeting rooms will be posted in the hotel lobby. Attendance by the public will be limited to space available.

Mr. John R. Abbott, Executive Secretary, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-0801, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: March 16, 1990.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 90-6632 Filed 3-22-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on March 9, 1990.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. National Longitudinal Alcohol Epidemiologic Survey (NLAES)—NEW—The National Institute on Alcohol Abuse and Alcoholism (NIAAA) needs information to address administrative and legal mandates of the Anti-Drug Abuse Act of 1988 and Year 2000 Health Objectives. This national longitudinal survey of non-institutionalized individuals will provide

reliable national and regional estimates of the incidence and prevalence of alcohol use disorders, their associated disabilities, and treatment utilization. Procedures and forms require pretesting for the initial wave 1 survey.

Respondents: Individuals or households; *Number of Respondents:* 460; *Number of Responses per Respondent:* 2; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 920 hours.

2. Longitudinal Study of Aging (LSOA)—0920-0219—The longitudinal Study of Aging is an information collection that follows people who were 70 or more when first interviewed in 1984. The study determines functional status and living arrangement changes over time to ascertain the paths from independence to dysfunction to institutionalization and death.

Respondents: Individuals or households; *Number of Respondents:* 5,539; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .830 hours; *Estimated Annual Burden:* 4,600 hours.

NIH/ADAMHA Consultant File—NEW—This information is collected from scientists and other technical experts to identify potential consultants to serve on committees that review and offer recommendations to the National Institutes of Health and the Alcohol, Drug Abuse, and Mental Health Administration on grants, cooperative agreements or contract proposals.

Respondents: Individuals or households; *Number of Respondents:* 7,333; *Number of Responses per Respondent:* 1.9; *Average Burden per Response:* 0.38 hours; *Estimated Annual Burden:* 5,333 hours.

4. Filing Objections and Requests for a Hearing on a Regulation or Order—0910-0184—To facilitate ruling on objections to agency action and request for a hearing, FDA requires that each objection be separately numbered and, if a hearing is requested on it, accompanied by a detailed description and analysis of factual information to be presented in support of the objection.

Respondents: Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 60; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 20 hours; *Estimated Annual Burden:* 1,200 hours.

OMB Desk Officer: Shannah Koss McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Officer Building, Room 3208, Washington, DC 20503.

Dated: March 19, 1990.

James M. Friedman,
Acting Deputy Assistant Secretary for, Health
(Planning and Evaluation).

[FR Doc. 90-6680 Filed 3-22-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-64]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: March 23, 1990.

ADDRESSES: For further information, contact James Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing and speech-impaired (202) 755-5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in

consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ-DA Attn: DAEN-ZCI-P-Robert Conte; Room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; Corps of Engineers: Bob Swieconeck, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW, Washington, DC 20415-1000; (202) 272-1750; U.S. Air Force: H. L. Lovejoy, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 767-4191; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 535-7067; U.S. Navy: John Carr, Code 2041C, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332; (202) 325-0474; Veterans Administration: Linda Tribby, 084A, Real Property Program Management, Veterans Administration, 810 Vermont Ave. NW, Washington, DC 20420; (202) 233-5026.

Dated: March 16, 1990.

Audrey E. Scott,

Acting Deputy Assistant Secretary for Program Development.

Suitable Land (by State)

Alabama

VA Medical Center

VAMC

Tuskegee, AL, Co: Macon

Landholding Agency: VA

Property Number: 979010053

Status: Underutilized

Comment: 40 acres; buffer to VA Medical Center; potential utilities; undeveloped.

Arkansas

Lick Creek

Norfolk Lake

West side of Lake

Mountain Home, AR, Co: Baxter

Location: Portions of Lake properties in Ozark and Taney Counties, MO., Fulton, Boone and Marion Counties, AR.

Landholding Agency: COE

Property Number: 319010961

Status: Underutilized

Comment: 140 acres; no utilities; most recent use—recreation.

Talbert

Norfolk Lake

Mountain Home, AR, Co: Baxter

Location: Portions of Lake properties in Ozark, Taney Counties, MO., Fulton, Boone and Marion counties, AR.

Landholding Agency: COE

Property Number: 319010962

Status: Underutilized

Comment: 4 acres; no utilities; most recent use—recreation.

Illinois Bayou

Lake Dardanelle

Dardanelle, AR, Co: Russellville

Location: Located west of dike view area.

Landholding Agency: COE

Property Number: 319010963

Status: Underutilized

Comment: 70 acres; no utilities; most recent use—recreation.

Dike View

Lake Dardanelle

Dardanelle, AR, Co: Russellville

Location: South of Interstate 40, 1 mile west of Highway 7 and Interstate 40.

Landholding Agency: COE

Property Number: 319010964

Status: Underutilized

Comment: 85 acres; no utilities; most recent use—recreation.

Salt Creek

Greers Ferry

Heber Springs, AR, Co: Cleburne

Location: Access by 1.5 mile gravel road from Highway 16.

Landholding Agency: COE

Property Number: 319010965

Status: Underutilized

Comment: 107 acres; no utilities; most recent use—recreation.

Bectum Hill

Ozark Lake

Ozark, AR, Co: Franklin

Location: North side of Ozark Lake

Landholding Agency: COE

Property Number: 319010966

Status: Underutilized

Comment: 155 acres; no utilities; most recent use—recreation.

Bear Creek Island

Beaver Lake

Rogers, AR, Co: Benton

Location: Portions of property in Carroll and Washington Counties.

Landholding Agency: COE

Property Number: 319010968

Status: Underutilized

Comment: 301 acres; no utilities; most recent use—recreation.

Pine Top

Beaver Lake

Rogers, AR, Co: Benton

Location: Portions of property in Carroll and Washington Counties.

Landholding Agency: COE

Property Number: 319010969

Status: Underutilized

Comment: 97 acres; no utilities; most recent use—recreation.

Alpine

Beaver Lake

Rogers, AR, Co: Benton

Location: Portions of property in Carroll and Washington Counties.

Landholding Agency: COE

Property Number: 319010970

Status: Underutilized

Comment: 49 acres; no utilities; most recent use—recreation.

Blue Springs

Beaver Lake

Rogers, AR, Co: Benton

Location: Portions of property in Carroll and Washington Counties.

Landholding Agency: COE

Property Number: 319010971

Status: Underutilized

Comment: 66 acres; no utilities; most recent use—recreation.

Slate GAP

Beaver Lake

Rogers, AR, Co: Benton

Location: Portions of property in Carroll and Washington Counties.

Landholding Agency: COE

Property Number: 319010972

Status: Underutilized

Comment: 288 acres; no utilities; most recent use—recreation.

Ventris

Beaver Lake

Rogers, AR, Co: Benton

Location: Portions on property in Carroll and Washington Counties.

Landholding Agency: COE

Property Number: 319010973

Status: Underutilized

Comment: 73 acres; no utilities; most recent use—recreation.

Rover

Nimrod Lake

Danville, AR, Co: Perry and Yell

Location: Southeast of Rover

Landholding Agency: COE

Property Number: 319010974

Status: Underutilized

Comment: 232 acres; no utilities; most recent use—recreation.

Brush Creek

Nimrod Lake

Danville, AR, Co: Perry and Yell

Location: South shore of Nimrod Lake

Landholding Agency: COE

Property Number: 319010975

Status: Underutilized

Comment: 128 acres; no utilities; most recent use—recreation.

Hogan Creek

Nimrod Lake

Danville, AR, Co: Perry and Yell

Location: Upper end of Lake, adjacent to

Ward Crossing Bridge.

Landholding Agency: COE

Property Number: 319010976

Status: Underutilized

Comment: 129 acres; no utilities; most recent use—recreation.

Damsite East

David D. Terry Lock and Dam

Little Rock, AR, Co: Pulaski

Location: Left bank of river at Lock and Dam; accessible via David D. Terry Road.

Landholding Agency: COE

Property Number: 319010977

Status: Underutilized

Comment: 45 acres; no utilities; most recent use—recreation.

Quarry Bluff

Blue Mountain Lake

Boonesville, AR, Co: Logan

Location: North side of lake immediately east of Ashley Creek Park.

Landholding Agency: COE

Property Number: 319010978

Status: Underutilized

Comment: 252 acres; no utilities; most recent use—recreation.

Brodie Park

Lock and Dam #5

Pine Bluff, AR, Co: Jefferson

Landholding Agency: COE

Property Number: 319010979

Status: Underutilized

Comment: 347 acres; no utilities; most recent use—recreation.

Wrightsville Park

Lock and Dam #5

Pine Bluff, AR, Co: Jefferson

Landholding Agency: COE

Property Number: 319010980

Status: Underutilized

Comment: 144 acres; seasonally used; no utilities; most recent use—recreation.

Mariners' Island

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010981

Status: Underutilized

Comment: 25 acres; no utilities; most recent use—recreation.

Fairview

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010982

Status: Underutilized

Comment: 70 acres; no utilities; most recent use—recreation.

Big Creek

Norfolk Lake

Mountain Home, AR, Co: Baxter

Location: Northside of Big Creek arm of

Norfolk Lake

Landholding Agency: COE

Property Number: 319010983

Status: Underutilized

Comment: 175 acres; no utilities; most recent use—recreation.

Curly Point

Norfolk Lake

Mountain Home, AR, Co: Baxter

Location: Southside of Big Creek arm of

Norfolk Lake.

Landholding Agency: COE

Property Number: 319010984

Status: Underutilized

Comment: 215 acres; no utilities; most recent use—recreation.

Eagle's Nest

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010985

Status: Underutilized

Comment: 50 acres; no utilities; most recent use—recreation.

Newton Landing

Norfolk Lake

Mountain Home, AR, Co: Baxter

Location: East side of lake at confluence of

Float Creek.

Landholding Agency: COE

Property Number: 319010986

Status: Underutilized

Comment: 160 acres; no utilities; most recent use—recreation.

Gulley Spring

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010987

Status: Underutilized

Comment: 35 acres; no utilities; most recent use—recreation.

Horseshoe Bend

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010988

Status: Underutilized

Comment: 615 acres; no utilities; most recent use—recreation.

Jimmie Creek Island

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010989

Status: Underutilized

Comment: 270 acres; no utilities; most recent use—recreation.

Music Creek

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010990

Status: Underutilized

Comment: 325 acres; no utilities; most recent use—recreation.

Noe Creek

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010991

Status: Underutilized

Comment: 80 acres; no utilities; most recent use—recreation.

Red Wolfe

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010992

Status: Underutilized

Comment: 50 acres; no utilities; most recent use—recreation.

Risley Hollow

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010993

Status: Underutilized

Comment: 60 acres; no utilities; most recent use—recreation.

Sugarloaf

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010994

Status: Underutilized

Comment: 50 acres; no utilities; most recent use—recreation.

Yocum Creek

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010995

Status: Underutilized

Comment: 90 acres; no utilities; most recent use—recreation.

Group Use

Bull Shoals Lake

Mountain Home, AR, Co: Baxter

Landholding Agency: COE

Property Number: 319010996

Status: Underutilized

Comment: 165 acres; no utilities; most recent use—recreation.

Seward Point
Norfolk Lake
Mountain Home, AR, Co: Baxter
Location: East side of Lake; opposite
Arkansas G&F Comm. Wildlife Refuge.
Landholding Agency: COE
Property Number: 319010997
Status: Underutilized
Comment: 1000 acres; no utilities; most recent
use—recreation.

Ford Cove
Norfolk Lake
Mountain Home, AR, Co: Baxter
Location: West side of Lake
Landholding Agency: COE
Property Number: 319010998
Status: Underutilized
Comment: 540 acres; no utilities; most recent
use—recreation.

Sister Creek
Bull Shoals Lake
Mountain Home, AR, Co: Baxter
Landholding Agency: COE
Property Number: 319010999
Status: Underutilized
Comment: 480 acres; no utilities; most recent
use—recreation.

Indian Point
Bull Shoals Lake
Mountain Home, AR, Co: Baxter
Landholding Agency: COE
Property Number: 319011000
Status: Underutilized
Comment: 400 acres; no utilities; most recent
use—recreation.

Highway 27 Park
Nimrod Lake
Danville, AR, Co: Perry
Landholding Agency: COE
Property Number: 319011007
Status: Underutilized
Comment: 48 acres; no utilities.

California

Isabella Lake
Box 997
Corps of Engineer Road
Lake Isabella, CA, Co: Kern
Landholding Agency: COE
Property Number: 319011014
Status: Unutilized
Comment: 63 acres; steep and brush covered;
no utilities.

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah, CA, Co: Mendocino
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush;
potential utilities.

New Hogan Lake
2713 Hogan Dam Road
Valley Springs, CA, Co: Calaveras
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush
covered.

Georgia

Naval Submarine Base
Grid R-2 to R-3 to V-4 to V-1
Kings Bay, GA, Co: Camden
Landholding Agency: Navy
Property Number: 779010229

Status: Underutilized
Comment: 111.57 acres; areas may be
environmentally protected; secured area
with alternate access.

Guam

Annex 1
Andersen Communication
Dededo, GU, Co: Guam
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities
easements.

Annex 2, (Partial)
Andersen Petroleum Storage
Dededo, GU, Co: Guam
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 32 acres; subject to utilities
easements.

Barrigada Transmitter Site
Barrigada, GU, Co: Guam
Location: In the municipality of Barrigada.
Access to installation is through Route 15
Landholding Agency: Air Force
Property Number: 189010429
Status: Unutilized
Comment: 209 acres.

Indiana

Cannelton Dam Site
Cannelton Locks and Dam
Cannelton, IN, Co: Perry
Location: 2.5 miles upstream from Cannelton
on SR66.
Landholding Agency: COE
Property Number: 319011047
Status: Unutilized
Comment: 128.38 acres; paved road; most
recent use—recreational overlook area.

Kentucky

Camp Breckinridge Military Res
Former Portion
Morganfield, KY, Co: Union
Location: KY Highway 56 (Tilden Road)
approximately 5 miles east of Morganfield.
On left hand side of KY Highway 56,
approximately ¼ mile before Anderson
Creek past the intersection of KY Highway
983.

Landholding Agency: GSA
Property Number: 549010014
Status: Excess
Comment: 0.12 acre consisting of a narrow
strip (20' wide at widest end).
GSA NO. 4-CR-KY-432-B

Parcel 1
Green River Lake Project
Campbellsville, KY, Co: Taylor
Location: Left side of KY Highway 70, just
past intersection highway 70 and 76.
Landholding Agency: GSA
Property Number: 549010019
Status: Excess
Comment: 17.37 acres; 1.05 acres encumbered
by a flowage easement; no improvements.
GSA NO. 4D-KY-589

Parcel 2
Green River Lake Project
Knifley, KY, Co: Adair

Location: 0.5 miles from Knifley on north side
of relocated KY highway 551.
Landholding Agency: GSA
Property Number: 549010020
Status: Excess
Comment: 1.14 acres.
GSA NO. 4-D-KY-589

Parcel 3
Green River Lake Project
Knifley, KY, Co: Adair
Location: 0.25 miles from Knifley north side of
relocated KY highway 551.
Landholding Agency: GSA
Property Number: 549010021
Status: Excess
Comment: 28.0 acres; 20.97 acres encumbered
by a flowage easement; no improvements.
GSA NO. 4-D-KY-589

Parcel 4
Green River Lake Project
Casey Creek, KY, Co: Adair
Location: 0.8 miles from Casey Creek north
side of KY highway 551.
Landholding Agency: GSA
Property Number: 549010022
Status: Excess
Comment: 62.26 acres; all encumbered by a
flowage easement; no improvements.
GSA NO. 4-D-KY-589

Parcel 5
Green River Lake Project
Neatsville, KY, Co: Adair
Location: 1.2 miles from Neatsville, N.W. side
of KY highway 206.
Landholding Agency: GSA
Property Number: 549010023
Status: Excess
Comment: 37.48 acres; 31.50 acres
encumbered by a flowage easement; no
improvements.
GSA NO. 4-D-KY-589

Parcel 6
Green River Lake Project
Neatsville, KY, Co: Adair
Location: .6 miles from Neatsville, east side
of KY highway 531
Landholding Agency: GSA
Property Number: 549010024
Status: Excess
Comment: 9.94 acres; 4.15 acres encumbered
by a flowage easement; no improvements.
GSA NO. 4-D-KY-589

Parcel 7
Green River Lake Project
Neatsville, KY, Co: Adair
Location: .5 miles from Neatsville, east side
of KY highway 206.
Landholding Agency: GSA
Property Number: 549010025
Status: Excess
Comment: 20.93 acres; 2.66 acres encumbered
by a flowage easement; no improvements.
GSA NO. 4-D-KY-589

Louisiana

Wallace Lake Dam and Reservoir
Shreveport, LA, Co: Caddo
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no
utilities.
Bayou Bodcau Dam and Reservoir
Haughton, LA, Co: Caddo

Location: 35 miles Northeast of Shreveport, La.
 Landholding Agency: COE
 Property Number: 319011010
 Status: Unutilized
 Comment: 203 acres; wildlife/forestry; no utilities.

Massachusetts

Hodges Village
 Dam Flood Control Project
 Old Howarth Road
 Oxford, MA, Co: Worcester
 Location: Portion of Tract A-108, See Project Manager at Hodges Village Dam, Oxford, MA (508) 987-2600.
 Landholding Agency: COE
 Property Number: 319011006
 Status: Excess
 Comment: 6.02 acres; 3 acres paved road, subject to utility easement.

Minnesota

VAMC
 4801 8th Street. No.
 St. Cloud, MN, Co: Sterns
 Landholding Agency: VA
 Property Number: 979010049
 Status: Underutilized
 Comment: 19.8 acres; possible flooding; limited utilities; most recent use—storage.

Parcel D
 Pine River
 Cross Lake, MN, Co: Crow Wing
 Location: 3 miles from city of Cross Lake, between highways 6 and 371.
 Landholding Agency: COE
 Property Number: 319011038
 Status: Excess
 Comment: 17 acres; no utilities.

Tract 92
 Sandy Lake
 McGregor, MN, Co: Aitkins
 Location: 4 miles west of highway 65, 15 miles from city of McGregor.
 Landholding Agency: COE
 Property Number: 319011040
 Status: Excess
 Comment: 4 acres; no utilities.

Tract 98
 Leech Lake
 Benedict, MN, Co: Hubbard
 Location: 1 mile from city of Federal Dam, Mn.
 Landholding Agency: COE
 Property Number: 319011041
 Status: Excess
 Comment: 7.3 acres; no utilities.

Missouri

Baird Mountain
 Table Rock Lake
 Branson, MO, Co: Taney
 Location: Southside of White River, near dam.
 Landholding Agency: COE
 Property Number: 319010967
 Status: Underutilized
 Comment: 90 acres; no utilities; most recent use—recreation.

Mississippi

Parcel 7
 Grenada Lake
 Sections 22, 23, T24N
 Grenada, MS, Co: Yalobusha

Landholding Agency: COE
 Property Number: 319011019
 Status: Underutilized
 Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
 Grenada Lake
 Section 20, T24N
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011020
 Status: Underutilized
 Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
 Grenada Lake
 Section 20, T24N, R7E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011021
 Status: Underutilized
 Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
 Grenada Lake
 Sections 16, 17, 18 T24N R8E
 Grenada, MS, Co: Calhoun
 Landholding Agency: COE
 Property Number: 319011022
 Status: Underutilized
 Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
 Grenada Lake
 Section 20 and T23N, R5E
 Grenada, MS, Co: Grenada
 Landholding Agency: COE
 Property Number: 319011023
 Status: Underutilized
 Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
 Grenada Lake
 Section 4, T23N, R5E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011024
 Status: Underutilized
 Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
 Grenada Lake
 Sections 2 and 3, T23N, R5E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011025
 Status: Underutilized
 Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
 Grenada Lake
 Section 7, T24N, R6E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011026
 Status: Underutilized
 Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
 Grenada Lake

Section 9, T24N, R6E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011027
 Status: Underutilized
 Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
 Grenada Lake
 Section 20, T24N, R8E
 Grenada, MS, Co: Calhoun
 Landholding Agency: COE
 Property Number: 319011028
 Status: Underutilized
 Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
 Grenada Lake
 Section 25, T24N, R7E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011029
 Status: Underutilized
 Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
 Grenada Lake
 Section 34, T24N, R7E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011030
 Status: Underutilized
 Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
 Grenada Lake
 Section 3, T23N, R6E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011031
 Status: Underutilized
 Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
 Grenada Lake
 Section 4, T24N, R6E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011032
 Status: Underutilized
 Comment: 40 utilities; most recent use—wildlife and forestry management.

Parcel 16
 Grenada Lake
 Section 9, T23N, R6E
 Grenada, MS, Co: Yalobusha
 Landholding Agency: COE
 Property Number: 319011033
 Status: Underutilized
 Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
 Grenada Lake
 Section 17, T23N, R7E
 Grenada, MS, Co: Grenada
 Landholding Agency: COE
 Property Number: 319011034
 Status: Underutilized
 Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
 Grenada Lake
 Section 22, T23N, R7E

Grenada, MS, Co: Grenada
Landholding Agency: COE
Property Number: 319011035

Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19

Grenada Lake
Section 9, T22N, R7E
Grenada, MS, Co: Grenada
Landholding Agency: COE
Property Number: 319011036

Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Ohio

Belleville Locks and Dam
Old Lock and Dam 18

(See County), OH, Co: Washington
Location: 8 miles downstream of Marietta, OH.

Landholding Agency: COE
Property Number: 319011005
Status: Excess

Comment: 20.36 acres, subject to flooding.

Oklahoma

Parcel 1

Hugo Lake
Section 24
(See County), OK, Co: Choctaw
Landholding Agency: COE
Property Number: 319010839
Status: Unutilized

Comment: 33.56 acres; potential utilities; most recent use—military training exercises.

Parcel 2

Hugo Lake
Section 6
(See County), OK, Co: Choctaw
Landholding Agency: COE
Property Number: 319010840
Status: Unutilized
Comment: 15 acres; potential utilities; undeveloped.

Parcel 3

Hugo Lake
Section 14
(See County), OK, Co: Choctaw
Landholding Agency: COE
Property Number: 319010841
Status: Unutilized
Comment: 5.50 acres; potential utilities; portion subject to flowage easement.

Parcel 7

Kaw Lake
Section 27
(See County), OK, Co: Kay
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Parcel 3

Sardis Lake
Section 21
(See County), OK, Co: Latimer
Landholding Agency: COE
Property Number: 319010843
Status: Excess
Comment: 2.5 acres; potential utilities; most recent use—wildlife management.

Parcel 4

Sardis Lake

Section 21

(See County), OK, Co: Latimer
Landholding Agency: COE
Property Number: 319010844
Status: Excess
Comment: 4.5 acres; potential utilities; most recent use—wildlife management.

Parcel 5

Tenkiller Ferry Lake
Section 27
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010838
Status: Underutilized

Comment: 120 acres; potential utilities; portion environmentally protected for bald eagle habitat.

Parcel 13

Tenkiller Ferry Lake
Section 2
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010845
Status: Underutilized

Comment: 20 acres; potential utilities; used for recreation; portion environmentally protected for bald eagle habitat.

Parcel 14

Tenkiller Ferry Lake
Section 35 and 36
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010846
Status: Underutilized
Comment: 40 acres; potential utilities; portion environmentally protected for bald eagle habitat.

Parcel 15

Tenkiller Ferry Lake
Section 35
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010847
Status: Unutilized
Comment: 17 acres; potential utilities; portion environmentally protected for bald eagle habitat.

Parcel 16

Tenkiller Ferry Lake
Section 36
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010848
Status: Underutilized
Comment: 12.5 acres; potential utilities; used for recreation; portion environmentally protected for bald eagle habitat.

Parcel 17

Tenkiller Ferry Lake
Section 31
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010849
Status: Underutilized
Comment: 30 acres; potential utilities; portion environmentally protected for bald eagle habitat.

Parcel 18

Tenkiller Ferry Lake
Section 31
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010850
Status: Underutilized

Comment: 16.5 acres; potential utilities; portion environmentally protected for bald eagle habitat.

Parcel 19

Tenkiller Ferry Lake
Sections 6 and 31
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010851
Status: Underutilized
Comment: 12.5 acres; potential utilities; portion environmentally protected for bald eagle habitat.

Parcel 20

Tenkiller Ferry Lake
Section 6
(See County), OK, Co: Sequoyah
Landholding Agency: COE
Property Number: 319010852
Status: Unutilized
Comment: 12.5 acres; potential utilities; used for recreation and development; portions environmentally protected for bald eagle habitat.

Parcel 21

Tenkiller Ferry Lake
Section 27
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010853
Status: Unutilized
Comment: 33 acres; potential utilities; used for recreation and development; portion environmentally protected for bald eagle habitat.

Parcel 22

Tenkiller Ferry Lake
Section 21
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010854
Status: Unutilized
Comment: 12.5 acres; potential utilities; used for recreation and development; portion environmentally protected for bald eagle habitat.

Tract 23

Tenkiller Ferry Lake
Section 16
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010855
Status: Underutilized
Comment: 17.5 acres; potential utilities; environmentally protected for bald eagle habitat.

Parcel 24

Tenkiller Ferry Lake
Section 10
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010856
Status: Underutilized
Comment: 16 acres; potential utilities; portion environmentally protected for bald eagle habitat.

Parcel 25

Tenkiller Ferry Lake
Section 11
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319010857
Status: Underutilized

Comment: 14 acres; potential utilities; portion environmentally protected for bald eagle habitat.

Parcel 49

Tenkiller Ferry Lake

(See County), OK, Co: Cherokee

Location: About 2 miles east of White Oak, OK.

Landholding Agency: COE

Property Number: 319010858

Status: Unutilized

Comment: 4.00 acres; potential utilities; portion environmentally protected; used for recreation.

Parcel 50

Tenkiller Ferry Lake

(See County), OK, Co: Cherokee

Location: About 2 miles east of White Oak, OK.

Landholding Agency: COE

Property Number: 319010859

Status: Unutilized

Comment: 11.36 acres; potential utilities; used for recreation; portion environmentally protected.

Parcel 51

Tenkiller Ferry Lake

(See County), OK, Co: Cherokee

Location: About 2½ miles east of Quails, OK.

Landholding Agency: COE

Property Number: 319010860

Status: Unutilized

Comment: 12.48 acres; potential utilities; used for recreation; portion environmentally protected.

Parcel 53

Tenkiller Ferry Lake

(See County), OK, Co: Cherokee

Location: About 4 miles southeast of Quails, OK.

Landholding Agency: COE

Property Number: 319010861

Status: Unutilized

Comment: 14.42 acres; potential utilities; used for recreation; portion environmentally protected.

Parcel 54

Tenkiller Ferry Lake

(See County), OK, Co: Cherokee

Location: About 4 miles southeast of Quails, OK.

Landholding Agency: COE

Property Number: 319010862

Status: Underutilized

Comment: 22.50 acres; potential utilities; used for recreation; portion environmentally protected.

Parcel 1

Fort Gibson Lake

Section 18

(See County), OK, Co: Cherokee

Location: Adjacent on west and south of State Highway #80.

Landholding Agency: COE

Property Number: 319010863

Status: Underutilized

Comment: 135 acres; limited utilities; most recent use—recreation; radio and two microwave towers located on property.

Parcel 2

Fort Gibson Lake

Section 4 and 9

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010864

Status: Unutilized

Comment: approximately 30 acres; potential utilities; most recent use—recreational and wildlife uses.

Parcel 3

Fort Gibson Lake

Section 8

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010865

Status: Underutilized

Comment: 66 acres; potential utilities; most recent use—recreational.

Parcel 4

Fort Gibson Lake

Section 8

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010866

Status: Underutilized

Comment: 1 acre; potential utilities; most recent use—recreational.

Parcel 5

Fort Gibson Lake

Section 7

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010867

Status: Underutilized

Comment: 24 acres; no utilities; most recent use—recreational.

Parcel 6

Fort Gibson Lake

Section 6

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010868

Status: Underutilized

Comment: 24 acres; potential utilities; most recent use—recreational.

Parcel 7

Fort Gibson Lake

Section 6

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010869

Status: Unutilized

Comment: 16.31 acres; potential utilities; most recent use—recreational and development.

Parcel 14

Fort Gibson Lake

Section 20

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010870

Status: Unutilized

Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.

Parcel 15

Fort Gibson Lake

Section 22

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010871

Status: Unutilized

Comment: 7.51 acres; potential utilities; most recent use—recreational.

Parcel 16

Fort Gibson Lake

Section 14

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010872

Status: Underutilized

Comment: 12 acres; potential utilities; most recent use—recreational.

Parcel 19

Fort Gibson Lake

Section 10

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010873

Status: Underutilized

Comment: 22 acres; potential utilities; most recent use—recreational.

Parcel 20

Fort Gibson Lake

Section 2

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010874

Status: Underutilized

Comment: 65 acres; potential utilities; most recent use—recreational.

Parcel 21

Fort Gibson Lake

Section 2

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010875

Status: Underutilized

Comment: 15 acres; potential utilities; most recent use—recreational.

Parcel 23

Fort Gibson Lake

Section 16

(See County), OK, Co: Cherokee

Landholding Agency: COE

Property Number: 319010876

Status: Underutilized

Comment: 90 acres; potential utilities; most recent use—recreational.

Parcel 28

Fort Gibson Lake

Section 35

(See County), OK, Co: Mayes

Landholding Agency: COE

Property Number: 319010877

Status: Unutilized

Comment: 36.59 acres; potential utilities; and intensive; most recent use—recreational.

Parcel 29

Fort Gibson Lake

Section 36

(See County), OK, Co: Mayes

Landholding Agency: COE

Property Number: 319010878

Status: Underutilized

Comment: 7 acres; potential utilities; most recent use—recreational.

Parcel 30

Fort Gibson Lake

Section 26

(See County), OK, Co: Mayes

Landholding Agency: COE

Property Number: 319010879

Status: Underutilized

Comment: 15 acres; potential utilities; most recent use—recreational.

Parcel 31

Fort Gibson Lake

Section 13

(See County), OK, Co: Mayes

Landholding Agency: COE

Property Number: 319010880

Status: Unutilized

Comment: 464.54 acres; potential utilities; subject to grazing leases and flowage easement; most recent use—recreational.

Parcel 35

Fort Gibson Lake
Section 26 and 35
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010881
Status: Unutilized

Comment: 49.89 acres; potential utilities; subject to flowage easement; most recent use—recreational.

Parcel 37

Fort Gibson Lake
Section 12
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010882
Status: Unutilized

Comment: 25.30 acres; potential utilities; subject to grazing leases and flowage easement; most recent use—recreational.

Parcel 39

Fort Gibson Lake
Section 8
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010883
Status: Unutilized

Comment: 200 acres; potential utilities; subject to grazing leases and flowage easement; most recent use—recreational.

Parcel 72

Fort Gibson Lake
Section 18 and 12
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010884
Status: Excess

Comment: 142 acres; potential utilities; subject to grazing leases; most recent use—recreational.

Parcel 73

Fort Gibson Lake
Section 7
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010885
Status: Underutilized

Comment: 12 acres; potential utilities; most recent use—recreational.

Parcel 74

Fort Gibson Lake
Section 7
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010886
Status: Underutilized

Comment: 31 acres; potential utilities; most recent use—recreational.

Parcel 75

Fort Gibson Lake
Section 16
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010887
Status: Excess

Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.

Parcel 76

Fort Gibson Lake
Section 15

(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010888

Status: Excess

Comment: 75 acres; potential utilities; subject to grazing/haying leases and flowage easement; most recent use—recreational.

Parcel 77

Fort Gibson Lake
Section 21
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010889
Status: Excess

Comment: 34 acres; potential utilities; subject to haying lease; most recent use—recreational.

Parcel 78

Fort Gibson Lake
Section 28
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010890
Status: Excess

Comment: 20 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.

Parcel 79

Fort Gibson Lake
Section 26
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010891
Status: Underutilized

Comment: 2 acres; potential utilities; most recent use—recreational.

Parcel 80

Fort Gibson Lake
Section 34
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010892
Status: Underutilized

Comment: 11 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel 81

Fort Gibson Lake
Section 34
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010893
Status: Underutilized

Comment: 13 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel 82

Fort Gibson Lake
Section 34
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319010894
Status: Underutilized

Comment: 10 acres; potential utilities; subject to grazing lease most recent use—recreational

Parcel 84

Fort Gibson Lake
Section 4
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010895
Status: Underutilized

Comment: 55 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel 85

Fort Gibson Lake
Section 5
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010896
Status: Underutilized

Comment: 18 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel 86

Fort Gibson Lake
Section 8
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010897
Status: Underutilized

Comment: 18 acres; no utilities; subject to grazing lease; most recent use—recreational.

Parcel 87

Fort Gibson Lake
Section 7
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010898
Status: Excess

Comment: 46.5 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.

Parcel 88

Fort Gibson Lake
Section 7
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010899
Status: Unutilized

Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel 89

Fort Gibson Lake
Section 7
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010900
Status: Excess

Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.

Parcel 90

Fort Gibson Lake
Section 8
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010901
Status: Underutilized

Comment: 25 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel 91

Fort Gibson Lake
Section 12
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010902
Status: Excess

Comment: 75 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.

Parcel 92
Fort Gibson Lake
Section 36
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010903
Status: Underutilized
Comment: 36 acres; potential utilities; subject to controlled flooding; most recent use—recreational.

Parcel 93
Fort Gibson Lake
Section 12
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010904
Status: Unutilized
Comment: 65 acres; potential utilities; subject to flowage easement; most recent use—recreational.

Parcel 94
Fort Gibson Lake
Section 4
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010905
Status: Excess
Comment: 85 acres; potential utilities; subject to haying lease; most recent use—recreational.

Parcel 95
Fort Gibson Lake
Section 33
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010906
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—recreational

Parcel 96
Fort Gibson Lake
Section 34
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010907
Status: Underutilized
Comment: 20 acres; potential utilities; subject to haying and grazing leases; most recent use—recreational.

Parcel 97
Fort Gibson Lake
Section 17
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 39010908
Status: Underutilized
Comment: 12 acres; potential utilities; most recent use recreational.

Parcel 98
Fort Gibson Lake
Section 9
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010909
Status: Underutilized
Comment: 5 acres; potential utilities; most recent use—recreational.

Parcel 83
Fort Gibson Lake
Section 9
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010910
Status: Underutilized
Comment: 48 acres; potential utilities; most recent use—recreational.

Parcel 24
Fort Gibson Lake
Section 10
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010911
Status: Underutilized
Comment: 12 acres; potential utilities; most recent use—recreational.

Parcel 25
Fort Gibson Lake
Section 10
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010912
Status: Underutilized
Comment: 14 acres; potential utilities; most recent use—recreational.

Parcel 26
Fort Gibson Lake
Section 2 and 11
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010913
Status: Underutilized
Comment: 106 acres; potential utilities; most recent use—recreational.

Parcel 27
Fort Gibson Lake
Section 2
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319010914
Status: Underutilized
Comment: 48 acres; potential utilities; most recent use—recreational.

Parcel No. 1
Optima Lake
Section 7
(See County), OK, Co: Texas
Landholding Agency: COE
Property Number: 319010915
Status: Underutilized
Comment: 220 acres; flat and open land; potential utilities; most recent use—recreational.

Parcel No. 2
Optima Lake
Section 28
(See County), OK, Co: Texas
Landholding Agency: COE
Property Number: 319010916
Status: Underutilized
Comment: 152 acres; flat and open land; most recent use—recreation.

Parcel No. 3
Optima Lake
Section 29
(See County), OK, Co: Texas
Landholding Agency: COE
Property Number: 319010917
Status: Underutilized
Comment: 70 acres; potential utilities; most recent use—recreation.

Parcel No. 4
Optima Lake
Section 31 and 6
(See County), OK, Co: Texas
Landholding Agency: COE
Property Number: 319010918
Status: Underutilized
Comment: 80 acres; potential utilities; most recent use—recreation.

Parcel #1

Broken Bow Lake
Government Lots 3 & 4
(See County), OK, Co: McCurtain
Landholding Agency: COE
Property Number: 319010919
Status: Underutilized
Comment: 33 acres; hilly wooded area; no utilities; most recent use—recreation.

Parcel #2
Broken Bow Lake
Section 22
(See County), OK, Co: McCurtain
Landholding Agency: COE
Property Number: 319010920
Status: Underutilized
Comment: 33 acres; hills and wooded; potential utilities; most recent use—recreation.

Parcel #3
Broken Bow Lake
Section 14
(See County), OK, Co: McCurtain
Landholding Agency: COE
Property Number: 319010921
Status: Underutilized
Comment: 158 acres; hills and wooded; potential utilities; most recent use—recreation.

Parcel #4
Broken Bow Lake
Section 14
(See County), OK, Co: McCurtain
Landholding Agency: COE
Property Number: 319010922
Status: Underutilized
Comment: 20 acres; hills and timberland; potential utilities; most recent use—recreation.

Pine Creek Lake
Section 27
(See County), OK, Co: McCurtain
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel #1
Birch Lake
Section 36
(See County), OK, Co: Osage
Landholding Agency: COE
Property Number: 319010924
Status: Underutilized
Comment: 14 acres; rocky and densely wooded; no utilities; most recent use—recreation.

Parcel #2
Birch Lake
Section 25 and 36
(See County), OK, Co: Osage
Landholding Agency: COE
Property Number: 319010925
Status: Underutilized
Comment: 72 acres; rocky and densely wooded; potential utilities; most recent use—recreation.

Pennsylvania

Tracts 610, 611, 612
Shenango River Lake
Sharpsville, PA, Co: Mercer
Location: I-79 North, I-80 West, Exit Sharon.
R18 North 4 miles, left on R518, right on Mercer Avenue.

Landholding Agency: COE
 Property Number: 319011001
 Status: Excess
 Comment: 24.43 acres; subject to flowage easement; existing property encroachments.

Loyalhanne Lake
 RD 2
 Saltsburg, PA, Co: Westmoreland
 Location: Fronts on state route 185.
 Landholding Agency: COE
 Property Number: 319011002
 Status: Underutilized
 Comment: 15 acres; radio communication antenna located on portion of land; most recent use—park and recreation.

Tracts L24, L26, and L27
 Crooked Creek Lake
 (See County), PA, Co: Armstrong
 Location: Left bank—55 miles downstream of dam.
 Landholding Agency: COE
 Property Number: 319011011
 Status: Unutilized
 Comment: 9.84 acres; potential for utilities.

East Branch Clarion River Lake
 Wilcox, PA, Co: Elk
 Location: Free camping area on the right bank off entrance roadway.
 Landholding Agency: COE
 Property Number: 319011012
 Status: Underutilized
 Comment: 1 acre; most recent use—free campground.

Tennessee

Tract 6827
 Barkley Lake
 Dover, TN, Co: Stewart
 Location: 2½ miles west of Dover, TN.
 Landholding Agency: COE
 Property Number: 319010927
 Status: Excess
 Comment: .57 acre; subject to existing easements.

Tracts 6002-2 and 6010
 Barkley Lake
 Dover, TN, Co: Stewart
 Location: 3½ miles south of village of Tabaccoport.
 Landholding Agency: COE
 Property Number: 319010928
 Status: Excess
 Comment: 100.86 acres; subject to existing easements.

Tract 11516
 Barkley Lake
 Ashland City, TN, Co: Dickson
 Location: ½ mile downstream from Cheatham Dam
 Landholding Agency: COE
 Property Number: 319010929
 Status: Excess
 Comment: 26.25 acres; subject to existing easements.

Tract 2319
 J. Percy Priest Dam and Reservoir
 Murfreesboro, TN, Co: Rutherford
 Location: West of Buckeye Bottom Road
 Landholding Agency: COE
 Property Number: 319010930
 Status: Excess
 Comment: 14.48 acres; subject to existing easements.

Tract 2227

J. Percy Priest Dam and Reservoir
 Murfreesboro, TN, Co: Rutherford
 Location: Old Jefferson Pike
 Landholding Agency: COE
 Property Number: 319010931
 Status: Excess
 Comment: 2.27 acres; subject to existing easements.

Tract 2107
 J. Percy Priest Dam and Reservoir
 Murfreesboro, TN, Co: Rutherford
 Location: Across Fall Creek near Fall Creek camping area.
 Landholding Agency: COE
 Property Number: 319010932
 Status: Excess
 Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
 Cordell Hull Lake and Dam Project
 Doe Row Creek
 Gainesboro, TN, Co: Jackson
 Location: TN Highway 56
 Landholding Agency: COE
 Property Number: 319010933
 Status: Unutilized
 Comment: 11 acres; subject to existing easements.

Tract 1911
 J. Percy Priest Dam and Reservoir
 Murfreesboro, TN, Co: Rutherford
 Location: East of Lamar Road
 Landholding Agency: COE
 Property Number: 319010934
 Status: Excess
 Comment: 15.31 acres; subject to existing easements.

Tract 2321
 J. Percy Priest Dam and Reservoir
 Murfreesboro, TN, Co: Rutherford
 Location: South of Old Jefferson Pike
 Landholding Agency: COE
 Property Number: 319010935
 Status: Excess
 Comment: 12 acres; subject to existing easements.

Tract 7206
 Barkley Lake
 Dover, TN, Co: Stewart
 Location: 2½ miles SE of Dover, TN.
 Landholding Agency: COE
 Property Number: 319010936
 Status: Excess
 Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
 Barkley Lake
 Cumberland, TN, Co: Stewart
 Location: 1½ miles East of Cumberland City.
 Landholding Agency: COE
 Property Number: 319010937
 Status: Excess
 Comment: 96 acres; subject to existing easements.

Tract 8911
 Barkley Lake
 Cumberland City, TN, Co: Montgomery
 Location: 4 miles east of Cumberland City.
 Landholding Agency: COE
 Property Number: 319010938
 Status: Excess
 Comment: 7.7 acres; subject to existing easements.

Tract 11503

Barkley Lake
 Ashland City, TN, Co: Cheatham
 Location: 2 miles downstream from Cheatham Dam.
 Landholding Agency: COE
 Property Number: 319010939
 Status: Excess
 Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
 Barkley Lake
 Ashland City, TN, Co: Cheatham
 Location: 2½ miles downstream from Cheatham Dam.
 Landholding Agency: COE
 Property Number: 319010940
 Status: Excess
 Comment: 19.5 acres; subject to existing easements.

Tract 6410
 Barkley Lake
 Bumpus Mills, TN, Co: Stewart
 Location: 4½ miles SW. of Bumpus Mills.
 Landholding Agency: COE
 Property Number: 319010941
 Status: Excess
 Comment: 17 acres; subject to existing easements.

Tract D-456
 Cheatham Lock and Dam
 Ashland, TN, Co: Cheatham
 Location: Right downstream bank of Sycamore Creek.
 Landholding Agency: COE
 Property Number: 319010942
 Status: Excess
 Comment: 8.93 acres; subject to existing easements.

Tract 9707
 Barkley Lake
 Palmyer, TN, Co: Montgomery
 Location: 3 miles NE of Palmyer, TN.
 Highway 149
 Landholding Agency: COE
 Property Number: 319010943
 Status: Excess
 Comment: 6.6 acres; subject to existing easements.

Tract 6949
 Barkley Lake
 Dover, TN, Co: Stewart
 Location: 1½ miles SE of Dover, TN.
 Landholding Agency: COE
 Property Number: 319010944
 Status: Excess
 Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
 Barkley Lake
 Dover, TN, Co: Stewart
 Location: 3 miles south of Village of Tobaccoport.
 Landholding Agency: COE
 Property Number: 319011173
 Status: Excess
 Comment: 5 acres; subject to existing easements.

Washington
 Mill Creek Lake Project
 Reservoir Road off Tausick Way
 Walla Walla, WA, Co: Walla Walla
 Location: At easterly edge of Walla Walla.
 Landholding Agency: COE

Property Number: 319011013
Status: Unutilized
Comment: 0.64 acre; triangular shape.

Wisconsin

VA Medical Center
County Highway E
Tomah, WI, Co: Monroe
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres; serves as buffer between center and private property; no utilities.

Suitable Buildings (by State)

Arkansas

Fort Chaffee
U.S. Army Garrison
1095 4th Avenue
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012811
Status: Underutilized
Comment: 3634 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1094 4th Avenue
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012812
Status: Underutilized
Comment: 2181 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1092 4th Avenue
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012813
Status: Underutilized
Comment: 3321 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1086 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012814
Status: Underutilized
Comment: 2717 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1085 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012815
Status: Underutilized
Comment: 1615 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1084 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012816
Status: Underutilized

Comment: 1159 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1083 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012817
Status: Underutilized
Comment: 1159 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercise.

Fort Chaffee
U.S. Army Garrison
1082 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012818
Status: Underutilized
Comment: 1615 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1081 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012819
Status: Underutilized
Comment: 2717 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1080 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012820
Status: Underutilized
Comment: 2717 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1079 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012821
Status: Underutilized
Comment: 1615 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1073 2nd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012822
Status: Underutilized
Comment: 3191 sq. ft.; 2 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1075 2nd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012823
Status: Underutilized
Comment: 1607 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee

U.S. Army Garrison
1077 2nd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012824
Status: Underutilized
Comment: 2290 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1078 3rd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012825
Status: Underutilized
Comment: 1159 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1076 2nd Street
Barling, AR, Co: Sebastian
Landholding Agency: Army
Property Number: 219012826
Status: Underutilized
Comment: 2221 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

California

Lake Sonoma
3333 Skaggs Springs Road
Geyserville, CA, Co: Sonoma
Landholding Agency: COE
Property Number: 319011016
Status: Unutilized
Comment: 2438 sq. ft.; 1 story wood frame; needs rehab; rural area.

Georgia

Tract #C-2195
Castellana and Turpen House
USA Tract #C-2195-CH-Oconee
Suches, GA, Co: Union
Landholding Agency: GSA
Property Number: 549010018
Status: Excess
Comment: 2212 sq. ft.; 1.5 story wood frame with basement; off-site removal only; most recent use—residence.
GSA NO. 4 A-GA-644

Idaho

Tract BC-3
Ditchrider House #704
S.E. 4th Avenue
(See County), ID, Co: Payette
Location: 1.25 miles east of Highway 30, 5.5 miles southeast of New Plymouth, ID.
Landholding Agency: GSA
Property Number: 549010016
Status: Excess
Comment: 886 sq. ft.; 1 story wood frame with ½ basement; most recent use—residence.
GSA NO. 9-I-ID-553
Tract BC-4
Ditchrider House #716
S.E. 2nd Avenue
(See County), ID, Co: Payette
Location: 1.25 miles west of Highway 30, 2.5 miles S.W. of New Plymouth, ID.
Landholding Agency: GSA
Property Number: 549010017
Status: Excess

Comment: 900 sq. ft.; 1 story wood frame with unfinished basement; most recent use—residence.
GSA NO. 9-I-ID-534

Indiana

Cecil M. Harden Lake
Rockville, IN, Co: Parke
Location: SR36 west from Indianapolis for approximately 50 miles to SR59, then south on 59 for approximately 5 miles, left on unnumbered road for about 2 miles to site.

Landholding Agency: COE
Property Number: 319011043
Status: Unutilized
Comment: 1219 sq. ft.; brick frame residence.

Middle Creek Access Site
Cannelton Locks and Dam Project
New Albany, IN, Co: Floyd
Location: Off Indiana highway 111 in Floyd County; approximately 2.5 miles southwest of New Albany, In.

Landholding Agency: COE
Property Number: 319011045
Status: Underutilized
Comment: 180 sq. ft.; concrete block pump house; potential utilities; subject to periodic flooding.

Cagles Mill Lake
Cagles Mill Lake Dam
Poland, IN, Co: Putnam
Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR42.

Landholding Agency: COE
Property Number: 319011046
Status: Unutilized
Comment: 1066 sq. ft.; wood frame residence; minor rehab.

Massachusetts

Hull, MA 36
Family Housing
1153 Nantasket Street
Hull, MA, Co: Plymouth
Landholding Agency: COE
Property Number: 319010802
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Hull, MA 36
Family Housing
1155 Nantasket Street
Hull, MA, Co: Plymouth
Landholding Agency: COE
Property Number: 319010803
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Hull, MA 36
Family Housing
1157 Nantasket Street
Hull, MA, Co: Plymouth
Landholding Agency: COE
Property Number: 319010804
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Hull, MA 36

Family Housing
1159 Nantasket Street
Hull, MA, Co: Plymouth
Landholding Agency: COE
Property Number: 319010805
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Hull, MA 36
Family Housing
1161 Nantasket Street
Hull, MA, Co: Plymouth
Landholding Agency: COE
Property Number: 319010806
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Hull, MA 36
Family Housing
1163 Nantasket Street
Hull, MA, Co: Plymouth
Landholding Agency: COE
Property Number: 319010807
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Hull, MA 36
Family Housing
1165 Nantasket Street
Hull, MA, Co: Plymouth
Landholding Agency: COE
Property Number: 319010808
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Hull, MA 36
Family Housing
1167 Nantasket Street
Hull, MA, Co: Plymouth
Landholding Agency: COE
Property Number: 319010809
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA 85
Family Housing
1 Lewis Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010810
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA 85
Family Housing
2 Lewis Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010811
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA 85
Family Housing
3 Lewis Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010812
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA 85
Family Housing
4 Lewis Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010813
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA 85
Family Housing
5 Lewis Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010814
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
6 Lewis Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010815
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
1 Mickelson Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010816
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
2 Mickelson Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010817
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
3 Mickelson Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010818
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
4 Mickelson Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010819
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
5 Mickelson Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010820
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
6 Mickelson Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010821
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
33 Pine Hill Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010822
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
35 Pine Hill Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010823
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
37 Pine Hill Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010824
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bedford, MA, 85
Family Housing
39 Pine Hill Street
Bedford, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010825

Status: Excess

Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
135 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010826
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
133 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010827
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
131 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010828
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
129 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010829
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
127 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010830
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
125 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010831
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
123 South Bedford
Burlington, MA, Co: Middlesex

Landholding Agency: COE

Property Number: 319010832

Status: Excess

Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
121 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010833
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
119 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010834
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
117 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010835
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
115 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010836
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Burlington, MA 84
Family Housing
113 South Bedford
Burlington, MA, Co: Middlesex
Landholding Agency: COE
Property Number: 319010837
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 9H
DVA Medical Center
Perry Point
Perry Point, MA, Co: Cecil
Landholding Agency: VA
Property Number: 979010048

Status: Underutilized
Comment: 19000 sq. ft.; 3 story reinforced concrete; basement floods; most recent use—nursing home.

Swansea, MA 29 Family Housing
1 Missile Drive

Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010945
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
2 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010946
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
3 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010947
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
4 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010948
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
5 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010949
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
6 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010950
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
7 Missile Drive
Swansea, MA Co: Bristol
Landholding Agency: COE
Property Number: 319010951
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

MA 29
Family Housing
8 Missile Drive

Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010952
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
9 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010953
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
10 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010954
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
11 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010955
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
12 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010956
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
12 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010957
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

MA 29
Family Housing
14 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010958
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing

15 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010959
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Swansea, MA 29
Family Housing
16 Missile Drive
Swansea, MA, Co: Bristol
Landholding Agency: COE
Property Number: 319010960
Status: Excess
Base Closure
Comment: 1510 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Maryland
Bldg. 8A
DVA Medical Center
Perry Point
Perry Point, MD, Co: Cecil
Landholding Agency: VA
Property Number: 979010047
Status: Underutilized
Comment: 17000 sq. ft.; 1 story masonry; needs a roof; no utilities most recent use—storage.

Minnesota
Orwell Dam Reservoir
RFD #4, Box 100
Fergus Falls, MN, Co: Ottertail
Location: Off highway 210, 12 miles from Fergus Falls.
Landholding Agency: COE
Property Number: 319011039
Status: Unutilized
Comment: 1040 sq. ft.; frame house; possible asbestos; potential utilities.
Former Yardmaster's Dwelling
Duluth Vessel Yard
900 Minnesota Avenue
Duluth, MN, Co: St. Louis
Landholding Agency: COE
Property Number: 319011042
Status: Unutilized
Comment: 1568 sq. ft.; 2 story wood frame residence; potential utilities; minor rehab.

New Jersey
Bldg. 0201
Holmdel Family Housing
Telegraph Hill
Holmdel, NJ, Co: Monmouth
Landholding Agency: COE
Property Number: 319010722
Status: Excess
Base Closure
Comment: 1196 sq. ft.; 1 story wood frame residence; preliminary env. assessment information on file; scheduled to be vacated 8/15/90.

Bldg. 0202
Holmdel Family Housing
Telegraph Hill
Holmdel, NJ, Co: Monmouth
Landholding Agency: COE
Property Number: 319010723
Status: Excess
Base Closure

Bldg. 0209
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen
Landholding Agency: COE

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. 0225

Livingston Family Housing
Hornung Court

East Hanover, NJ, Co: Morris

Landholding Agency: COE

Property Number: 319010782

Status: Unutilized

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. 0226

Livingston Family Housing
Hornung Court

East Hanover, NJ, Co: Morris

Landholding Agency: COE

Property Number: 319010783

Status: Unutilized

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. 0227

Livingston Family Housing
Hornung Court

East Hanover, NJ, Co: Morris

Landholding Agency: COE

Property Number: 319010784

Status: Unutilized

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; possible asbestos in floor tile; scheduled to be vacated 8/15/90.

Bldg. 0228

Livingston Family Housing
Hornung Court

East Hanover, NJ, Co: Morris

Landholding Agency: COE

Property Number: 319010785

Status: Unutilized

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. 0230

Livingston Family Housing
Hornung Court

East Hanover, NJ, Co: Morris

Landholding Agency: COE

Property Number: 319010786

Status: Unutilized

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. 0231

Livingston Family Housing
Hornung Court

East Hanover, NJ, Co: Morris

Landholding Agency: COE

Property Number: 319010787

Status: Unutilized

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. 0232

Livingston Family Housing
Hornung Court

East Hanover, NJ, Co: Morris

Landholding Agency: COE

Property Number: 319010788

Status: Unutilized

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. 0229

Livingston Family Housing
Hornung Court

East Hanover, NJ, Co: Morris

Landholding Agency: COE

Property Number: 319010789

Status: Excess

Base Closure

Comment: 1196 sq. ft.; 1 story wood frame residence; Preliminary environmental assessment information on file; scheduled to be vacated 8/15/90.

Bldg. 0201

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010790

Status: Unutilized

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0202

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010791

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0203

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010792

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0204

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010793

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0205

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010794

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0206

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010795

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0207

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010796

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0208

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010797

Status: Unutilized

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0209

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010798

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0210

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010799

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0211

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010800

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Bldg. 0212

Old Bridge Family Housing

Jake Brown Road

Old Bridge, NJ, Co: Middlesex

Landholding Agency: COE

Property Number: 319010801

Status: Unutilized

Base Closure

Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

46 Navy Drive
Davisville, RI, Co: Kingston
Landholding Agency: COE
Property Number: 319010684
Status: Excess

Status: Excess
Base Closure
Comment: 4800 sq. ft.; 2 story wood frame residence; scheduled to be vacated 8/15/90.

Davisville
Family Housing
67 Navy Drive
Davisville, RI, Co: Kingston
Landholding Agency: COE
Property Number: 319010705
Status: Excess
Base Closure
Comment: 4800 sq. ft.; 2 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1001 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010706
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1002 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010707
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1003 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010708
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1004 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010709
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1005 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010710
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1006 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010711
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1007 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010712
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1008 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010713
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1009 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010714
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1010 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010715
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1011 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010716
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1012 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010717
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1013 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010718
Status: Excess
Base Closure

Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1014 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010719
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1015 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010720
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Slaterville RI99
Family Housing
1016 Pound Hill Street
North Smithfield, RI, Co: Providence
Landholding Agency: COE
Property Number: 319010721
Status: Excess
Base Closure
Comment: 1100 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Texas

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010161
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010162
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2460
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010163
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2462
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010164
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2464
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces

Bldg. 2429
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010184
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2454
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010185
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2477
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010186
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2485
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010187
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2499
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010188
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2503
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010189
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2507
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2513
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010191
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces
Landholding Agency: Navy
Property Number: 779010192
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Washington
Coulee Dam House
1114 Camas
Coulee, WA, Co: Okanogan

Landholding Agency: GSA
 Property Number: 549010013
 Status: Excess
 Comment: 2205 sq. ft.; 2 story wood frame residence with garage; property on Indian Reservation; use limitations.
 GSA NO. 9-I-WA-939N

Wisconsin

Bldg. 2
 VA Medical Center
 County Highway E
 Tomah, WI, Co: Monroe
 Landholding Agency: VA
 Property Number: 979010055
 Status: Underutilized
 Comment: 18000 sq. ft.; 3 story masonry; needs rehab.; possible asbestos; potential utilities.
 Bldg. 8
 VA Medical Center
 County Highway E
 Tomah, WI, Co: Monroe
 Landholding Agency: VA
 Property Number: 979010056
 Status: Underutilized
 Comment: 2200 sq. ft.; 2 story wood frame; possible asbestos; potential utilities; structural deficiencies; needs rehab.

Unsuitable Land (by State)

Alaska

Campion Air Force Station
 21 CSG/DEER
 Elmendorf AFB, AK, Co: Anchorage
 Landholding Agency: Air Force
 Property Number: 189010430
 Status: Unutilized
 Reason: Other
 Comment: isolated and remote area; Arctic coast.
 Lake Louise Recreation
 21 CSG-DEER
 Elmendorf AFB, AK, Co: Anchorage
 Landholding Agency: Air Force
 Property Number: 189010431
 Status: Unutilized
 Reason: Other
 Comment: Isolated and remote area; Arctic coast.

Nikolski Radio Relay Site
 21 CSG/DEER
 Elmendorf AFB, AK, Co: Anchorage
 Landholding Agency: Air Force
 Property Number: 189010432
 Status: Unutilized
 Reason: Other
 Comment: Isolated and remote area; Arctic coast.

Georgia

Naval Submarine Base
 Grid C-5 to C-10 to Q-6 to P-2
 Kings Bay, GA, Co: Camden
 Landholding Agency: Navy
 Property Number: 779010228
 Status: Underutilized
 Reason: Secured Area.

Illinois

Parcel 1
 Joliet Army Ammunition Plant
 Joliet, IL, Co: Will
 Location: South of the 811 Magazine Area, adjacent to the River Road.
 Landholding Agency: Army

Property Number: 219012810
 Status: Excess
 Reason: Within 2000. ft. of flammable or explosive material Floodway.

Indiana

Grandview Recreation Site
 Newburgh Locks and Dam, Ohio River
 Grandview, IN, Co: Spencer
 Location: West edge of Grandview, In, just off SR66.
 Landholding Agency: COE
 Property Number: 319011044
 Status: Unutilized
 Reason: Floodway.

Minnesota

Parcel G
 Pine River
 Cross Lake, MN, Co: Crow Wing
 Location: 3 miles from city of Cross Lake between highways 6 and 371.
 Landholding Agency: COE
 Property Number: 319011037
 Status: Excess
 Reason: Other
 Comment: Highway right of way.

Mississippi

Parcel 1
 Grenada Lake
 Section 20
 Grenada, MS, Co: Grenada
 Landholding Agency: COE
 Property Number: 319011018
 Status: Underutilized
 Reason: Within airport runway clear zone.

Oklahoma

Parcel #3
 Birch Lake
 Section 22
 (See County), OK, Co: Osage
 Landholding Agency: COE
 Property Number: 319010926
 Status: Underutilized
 Reason: Within 2000 ft. of flammable or explosive material.

Pennsylvania

Easement—(P)
 Navy Air Development Center
 167 Kirk Road
 Ivyland, PA, Co: Bucks
 Landholding Agency: GSA
 Property Number: 549010015
 Status: Surplus
 Reason: Other
 Comment: No property involved, air space easement only.
 GSA NO. 4 N-PA-435-C.

Texas

Tract 1237
 Lake Waco
 (See County), TX, Co: McLennan
 Landholding Agency: COE
 Property Number: 319011008
 Status: Excess
 Reason: Floodway.

Washington

Land (Report 2), 234 acres
 Naval Supply Center, Puget Sound
 Manchester, WA, Co: Kitsap
 Landholding Agency: Navy
 Property Number: 779010231
 Status: Unutilized

Reason: Secured Area.

UNSUITABLE BUILDINGS (by State)

Alaska

Bldg. 50
 Cold Bay Air Force Station
 21 CSG/DEER
 Elmendorf AFB, AK, Co: Anchorage
 Landholding Agency: Air Force
 Property Number: 189010433
 Status: Unutilized
 Reason: Other
 Comment: Isolated and remote; Arctic coast.

Colorado

Bldg. 168
 Pueblo Army Depot
 Pueblo, CO, Co: Pueblo
 Location: 14 miles east of Pueblo City on US Highway 50.
 Landholding Agency: Army
 Property Number: 219012743
 Status: Underutilized
 Reason: Secured area.
 Bldg. 174
 Pueblo Army Depot
 Pueblo, CO, Co: Pueblo
 Location: 14 miles east of Pueblo City on US Highway 50.
 Landholding Agency: Army
 Property Number: 219012744
 Status: Unutilized
 Reason: Secured area.
 Bldg. 42
 Pueblo Army Depot
 Pueblo, CO, Co: Pueblo
 Location: 14 miles east of Pueblo City on US Highway 50.
 Landholding Agency: Army
 Property Number: 219012745
 Status: Unutilized
 Reason: Secured area.
 Bldg. 313
 Pueblo Army Depot
 Pueblo, CO, Co: Pueblo
 Location: 14 miles east of Pueblo City on US Highway 50.
 Landholding Agency: Army
 Property Number: 219012746
 Status: Unutilized
 Reason: Secured area.
 Bldg. 184
 Pueblo Army Depot
 Pueblo, CO, Co: Pueblo
 Location: 14 miles east of Pueblo City on US Highway 50.
 Landholding Agency: Army
 Property Number: 219012747
 Status: Underutilized
 Reason: Secured area.
 Bldg. 173
 Pueblo Army Depot
 Pueblo, CO, Co: Pueblo
 Location: 14 miles east of Pueblo City on US Highway 50.
 Landholding Agency: Army
 Property Number: 219012748
 Status: Unutilized
 Reason: Secured area.

Indiana

Cannelton Dam Site
 Cannelton Locks and Dam
 Cannelton, IN, Co: Perry

Location: 2.5 miles upstream from Cannelton on SR66.
 Landholding Agency: COE
 Property Number: 219011048
 Status: Unutilized
 Reason: Other
 Comment: Latrine, detached structure.

New Jersey

Bldg. 2711
 Armament Reserve Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012756
 Status: Excess
 Reason: Secured area.
 Bldg. 521
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012757
 Status: Excess
 Reason: Secured area.
 Bldg. 523
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012758
 Status: Excess
 Reason: Secured area.
 Bldg. 527A
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012759
 Status: Excess
 Reason: Secured area.
 Bldg. 603A
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012760
 Status: Excess
 Reason: Secured area.
 Bldg. 732G
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012761
 Status: Excess
 Reason: Secured area.
 Bldg. 735
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012762
 Status: Excess
 Reason: Secured area.
 Bldg. 832
 Armament Research Dev. and Engineering Center

Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012763
 Status: Excess
 Reason: Secured area.
 Bldg. 1430
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012764
 Status: Excess
 Reason: Secured area.
 Bldg. 1431
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012765
 Status: Excess
 Reason: Secured area.
 Bldg. 1512B
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012766
 Status: Unutilized
 Reason: Secured area.
 Bldg. 1616
 Armament Research Dev. and Engineering Center
 Route 15 North
 Picatinny Arsenal, NJ, Co: Morris
 Landholding Agency: Army
 Property Number: 219012767
 Status: Unutilized
 Reason: Secured area.
 Bldg. 401 (Main Post)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012827
 Status: Unutilized
 Reason: Secured area.
 Bldg. 2337
 Fort Monmouth
 Charles Wood Area
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012828
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9004 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012829
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9005 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012830
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9049 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth

Landholding Agency: Army
 Property Number: 219012831
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9061 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012832
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9094 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012833
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9095 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012834
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9117 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012835
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9119 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012836
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9124 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012837
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9126 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012838
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9154 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012839
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9315 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012840
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9334 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012841
 Status: Unutilized

Reason: Secured area.
 Bldg. 9342 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012842
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9347 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012843
 Status: Unutilized
 Reason: Secured area.
 Bldg. 9379 (Evans Area)
 Fort Monmouth
 Wall, NJ, Co: Monmouth
 Landholding Agency: Army
 Property Number: 219012844
 Status: Unutilized
 Reason: Secured area.

Texas

Bldg. 24
 Olin E. Teague Veterans Center
 1901 South 1st Street
 Temple, TX, Co: Bell
 Landholding Agency: VA
 Property Number: 979010050
 Status: Unutilized
 Reason: Other environmental
 Comment: Friable asbestos.
 Bldg. 25
 Olin E. Teague Veterans Center
 1901 South 1st Street
 Temple, TX, Co: Bell
 Landholding Agency: VA
 Property Number: 979010051
 Status: Unutilized
 Reason: Other environmental
 Comment: Friable asbestos.
 Bldg. 26
 Olin E. Teague veterans Center
 1901 South 1st Street
 Temple, TX, Co: Bell
 Landholding Agency: VA
 Property Number: 979010052
 Status: Unutilized
 Reason: Other environmental
 Comment: Friable asbestos.

Utah

Bldg. 561R
 Tooele Army Depot, South Area
 Tooele, UT, Co: Tooele
 Location:
 19 miles south of Tooele City on State
 Highway 36 and 73.
 Landholding Agency: Army
 Property Number: 219012742
 Status: Underutilized
 Reason: Secured area.
 Bldg. S-5158
 Tooele Army Depot, South Area
 Tooele, UT, Co: Tooele
 Location: 19 miles south of Tooele City on
 State Highway 36 and 73.
 Landholding Agency: Army
 Property Number: 219012749
 Status: Unutilized
 Reason: Secured area.
 Bldg. 516-1
 Tooele Army Depot—North Area

Tooele, UT, Co: Tooele
 Location: 4 miles south of Tooele City on
 State Highway 36.
 Landholding Agency: Army
 Property Number: 219012750
 Status: Underutilized
 Reason: Secured area.
 Bldg. S-4301
 Tooele Army Depot—South Area
 Tooele, UT, Co: Tooele
 Location: 19 miles south of Tooele City on
 State Highway 36 and 73.
 Landholding Agency: Army
 Property Number: 219012751
 Status: Underutilized
 Reason: Secured area.
 Bldg. 4519
 Tooele Army Depot, South Area
 Tooele, UT Co: Tooele
 Location: 19 miles south of Tooele City on
 State Highway 36 and 73.
 Landholding Agency: Army
 Property Number: 219012752
 Status: Unutilized
 Reason: Secured area.
 Bldg. 5124
 Tooele Army Depot, South Area
 Tooele, UT, Co: Tooele
 Location: 19 miles south of Tooele City on
 State Highway 36 and 73.
 Landholding Agency: Army
 Property Number: 219012753
 Status: Unutilized
 Reason: Secured area.
 Bldg. S-1865
 Tooele Army Depot, South Area
 Tooele, UT Co: Tooele
 Location: 19 miles south of Tooele City on
 State Highway 36 and 73.
 Landholding Agency: Army
 Property Number: 219012754
 Status: Unutilized
 Reason: Secured area.
 Bldg. 8022
 Tooele Army Depot, South Area
 Tooele, UT Co: Tooele
 Landholding Agency: Army
 Property Number: 219012755
 Status: Unutilized
 Reason: Secured area.

Washington

Bldg. 47 (Report 1)
 Naval Supply Center, Puget Sound
 Manchester, WA, Co: Kitsap
 Landholding Agency: Navy
 Property Number: 779010230
 Status: Unutilized
 Reason: Secured area.
 Universe of Properties:
 608 = Total
 546 = Suitable
 349 = Suitable Buildings
 197 = Suitable Land
 62 = Unsuitable
 50 = Unsuitable Buildings
 12 = Unsuitable Land
 0 = Number of Resubmissions
 [FR Doc. 90-661 Filed 03-21-90; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-746795

Applicant: Finchaven International Bird Sanctuary, Junction City, Oregon.

The applicant requests a permit to purchase eight captive-hatched scarlet-chested parakeets (*Neophema splendida*) from S.E. Bird Supply Co., San Gabriel, CA for the purpose of captive-propagation.

PRT-747674

Applicant: Barbara Hoffmann, Seffner, FL.

The applicant requests a permit to export and reimport three female leopards (*Panthera pardus*) and one male tiger (*Panthera tigris*) for entertainment purposes. The applicant will educate the public regarding these species' ecological roles and conservation needs during each performance. All of the cats were born in captivity in the United States and may be exported and reimported in the future for the same types of entertainment exhibitions.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, VA 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: March 20, 1990.

Karen Willson,
Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-6679 Filed 3-22-90; 8:45 am]

BILLING CODE 4310-55-M

Stephens' Kangaroo Rat; Availability of Final Environmental Impact Statement on Proposed Issuance of a Permit to Allow Incidental Take

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) on the proposed issuance of a permit to allow incidental take of the endangered Stephens' kangaroo rat under section 10(a) of the Endangered Species Act.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Fish and Wildlife Service (Service) has prepared a Final Environmental Impact Statement on the proposed issuance of a permit to allow incidental take, for a period of two years, of the federally listed endangered Stephens' kangaroo rat (*Dipodomys stephensi*) in certain areas of Riverside County, California under section 10(a) of the Endangered Species Act of 1973, as amended. The allowed take would be in association with otherwise lawful proposed public and private development projects. In addition to the no action alternative two action alternatives are being considered. No final decision can be made on this proposal during the 30 days following the filing of this EIS, in accordance with the Council of Environmental Quality Regulations, 40 CFR 1506.10(b)(2).

ADDRESSES: The Final EIS may be inspected by appointment during normal business hours at: U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Fourth Floor, Portland, Oregon 97232-4181; and Ventura Field Station, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003.

FOR FURTHER INFORMATION, CONTACT: Peter A. Stine, EIS Team Leader Laguna Niguel Field Station, U.S. Fish and Wildlife Service, Federal Building, 24000 Avila Road, Laguna Niguel, California 92677, 714/643-4270 or FTS/796-4270.

SUPPLEMENTARY INFORMATION:

Background

The proposed action would allow development to occur on up to 20 percent or 4,400 acres, whichever is less, of the approximately 22,000 acres of remaining habitat occupied by the Stephens' kangaroo rat species in western Riverside County. To mitigate for the loss of habitat, it is proposed that up to 4,400 acres (as needed to replace loss of habitat at a 1:1 ratio) of occupied habitat in the vicinity of lands currently in public or semipublic ownership be acquired during the two year permit period. These lands would be placed

into public ownership for the management of the species. The acquisition of the private lands would be funded, in part, from mitigation fees (\$1,950 per acre) collected by the applicant jurisdictions.

The issuance of the permit would respond to the immediate need to allow for otherwise lawful private and public improvement projects compatible with the existence and recovery of the Stephens' kangaroo rat under the limitations and constraints imposed by the Endangered Species Act and other applicable Federal, State, and local laws. Alternatives being considered are: (1) Issuance of the permit with the submitted habitat conservation plan (plan), (2) issuance of the permit with a modified plan and boundaries of the reserve study areas, and (3) denial of the permit—no action.

The Service issued a final rule which determined the Stephens' kangaroo rat to be an endangered species (53 FR 38465), effective on October 31, 1988. Because of its listing as an endangered species, the Stephens' kangaroo rat is protected by the Act's prohibition against "taking" (16 U.S.C. 1538). The Service, however, may issue permits to carry out otherwise lawful activities involving take of endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities.

The County of Riverside and the cities of Riverside, Moreno Valley, Lake Elsinore, Hemet, and Perris have submitted an application to the Service for a permit to incidentally take Stephens' kangaroo rats in association with otherwise lawful public and private projects in the western portion of the County. The applicant jurisdictions would approve the issuance of land development permits, subsequent to California Environmental Quality Act-mandated review of potential impacts to other environmental resources during the two-year period in which the proposed Federal permit would be in effect. During this two-year period the permit applicants intend to conduct further biological, economic, and land use studies to determine the precise boundaries of a recommended, long-term reserve system. At the conclusion of these studies the permit applicants are considering applying for a long-term incidental take permit.

The underlying purpose or goal of the proposed action is to develop a program designed to ensure the continued

existence of the species, while resolving potential conflicts that may arise from otherwise lawful private and public improvement projects.

Copies of the EIS have been sent to all agencies and individuals who participated in the scoping process, submitted comments to the Draft EIS, and have requested copies of the Draft EIS. A limited number of copies of the Final EIS may be obtained upon request from the contact person identified below.

Dated: March 23, 1990.

William E. Martin,
Deputy Regional Director.

[FR Doc. 90-6525 Filed 3-22-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Locations and Dates of Public Hearings Regarding the Draft Environmental Impact Statement for Proposed Central, Western, and Eastern Gulf of Mexico Sales 131/135/137

On March 7, 1990, a Federal Register Notice 45FR8198 announced the availability of the draft Environmental Impact Statement (EIS) for the proposed 1991 Outer Continental Shelf (OCS) oil and gas lease sales in the Central, Western, and Eastern Gulf of Mexico indicating that the dates, times, and locations of public hearings on the draft EIS would be announced at a later date. The purpose of these public hearings is to provide the Department of the Interior and the Minerals Management Service with information from individuals, public and private groups, and Government Agencies to further evaluate the potential effects of the proposed lease sales. Pertinent testimony and comments will be addressed in the final EIS for Sales 131, 135, and 137.

The public hearings are scheduled on the following dates and times at the following locations:

April 23, 1990, New Orleans, Louisiana, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, Conference Room 111, 2 p.m. to 4 p.m.

April 24, 1990, Corpus Christi, Texas, Corpus Christi, Wyndham Hotel (formerly the Hershey Hotel), 900 North Shoreline Boulevard, 7 p.m. to 10 p.m.

April 24, 1990, Biloxi, Mississippi, J.L. Scott Marine Education Center and Aquarium, East Beach Road, 7 p.m. to 10 p.m.

May 1, 1990, Tallahassee, Florida, Tallahassee—Leon County Civic Center, 505 West Pensacola Street, 2 p.m. to 6 p.m.

May 1, 1990, Tampa, Florida, Ramada Hotel—Tampa Airport, 5305 West Kennedy Boulevard, 7 p.m. to 10 p.m.

May 2, 1990, Pensacola, Florida, Holiday Inn Bay Beach, 51 Gulf Breeze Parkway, 7 p.m. to 10 p.m.

Persons who wish to testify at these hearings are requested to contact the Regional Supervisor, by writing to the Office of Leasing and Environment (LE-2), Gulf of Mexico Region, 1201 Elmwood Park Boulevard, Room 311, New Orleans, Louisiana 70123, or by telephone (504) 736-2540, no later than 3:30 p.m., April 18, 1990. Unscheduled speakers may have an opportunity to speak following testimony of those who have made arrangements in advance, if time permits. Oral testimony should be limited to 10 minutes. Testimony may be supplemented by a written statement which, if submitted at a hearing, will be considered as part of the hearing record. Those unable to attend the hearing may submit written statements until the close of the comment period, May 1, 1990. Written statements will receive the same degree of consideration in the final EIS as oral testimony presented at the hearing.

After all the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: March 16, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

[FR Doc. 90-6631 Filed 3-22-90; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

[OSM-PE-11 and OSM-EIS-27]

Availability of Final Petition Evaluation Document/Environmental Impact Statement on the Flat Fork Watershed in Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Availability of final petition evaluation document/environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available a final petition evaluation document/environmental impact statement (PED/EIS) on the Flat Fork watershed in Tennessee. The PED/

EIS has been prepared to assist the Secretary of the Interior in making a decision on the petition to designate certain lands as unsuitable for surface coal mining operations in the Flat Fork watershed in Tennessee.

ADDRESSES: Copies of the final PED/EIS may be obtained from Joe B. Maddox, Chief, Division of Tennessee Permitting, OSM, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Joe B. Maddox, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902; telephone (615) 673-4356.

DATES: Copies of the PED/EIS are available as of March 16, 1990.

SUPPLEMENTARY INFORMATION: On September 27, 1985, Donald E. Todd, Mary Ann McPeters, William E. Armes, and the Frozen Head State Park Association, Inc., the Tennessee Citizens for Wilderness Planning, and the Sierra Club filed a petition with OSM to designate certain lands as unsuitable for surface coal mining operations in the Flat Fork and Mud Creek watersheds, Tennessee. Although the petition was filed in accordance with 30 CFR 942.764, evaluation of the document was delayed nearly three years as a result of legal appeals. OSM began to reprocess the petition on August 23, 1988, and on October 13, 1989, OSM made available the draft PED/EIS for a 60-day public review and comment period.

The final PED/EIS was prepared by OSM as directed by section 522(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). OSM has analyzed five alternatives which range from designation of the entire petition area as unsuitable for all surface coal mining operations, to designating parts of the petition area, to not designating any of the petition area as unsuitable for surface coal mining operations.

In preparing the final PED/EIS, OSM has revised the draft PED/EIS in response to comments received during the public comment period. These comments and OSM's responses to them are included in the final PED/EIS.

No decision will be made on the petition by the Secretary of the Interior until at least 30 days from the time the PED/EIS is made available to the public. Notice of such a decision by the Secretary of the Interior will be made available to the public at that time.

Dated: March 20, 1990.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 90-6660 Filed 3-22-90 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-455 (Preliminary)]

Multi-Angle Laser Light Scattering Instruments and Parts Thereof From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-455 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of multi-angle laser light scattering instruments, provided for in subheading 9027.30.40 of the Harmonized Tariff Schedule of the United States (previously reported under item 712.49 of the Tariff Schedules of the United States), and parts thereof, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 3, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: March 19, 1990.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-252-1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in

gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on March 19, 1990 by Wyatt Technology Corporation, Santa Barbara, CA.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 11, 1990 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202-252-1200) not later than April 6, 1990 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before April 13, 1990 a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than April 17, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: March 19, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-6742 Filed 3-22-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (90-2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the second quarter 1990 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter RCAF (Unadjusted) is 1.098. The second quarter RCAF (Adjusted) is 1.054, a decrease of 0.2 percent from the first quarter RCAF (Adjusted) of 1.056. Maximum second quarter 1990 RCAF rate levels may not exceed 99.8 percent of maximum first quarter 1990 RCAF rate levels.

EFFECTIVE DATE: April 1, 1990.

FOR FURTHER INFORMATION CONTACT

William T. Bono, (202) 275-7354
Robert C. Hasek, (202) 275-0938
[TDD for hearing impaired, (202) 275-1721]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721].

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: March 16, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Emmett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 90-6662 Filed 3-22-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31611]

Grand Trunk Western Railroad Co.; Trackage Rights Exemption for Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant overhead trackage rights to Grand Trunk Western Railroad Company (GTW) over a portion of its main line between Riverdale and Franklin Park,

IL, as follows: (1) Between IHB's connection with the Union-Pacific Railroad at Dolton Tower and IHB's connection with the Chicago and Northwestern Transportation Company's (CNW) Proviso yard; and (2) between IHB's connection with GTW and GTW's Tower at Blue Island, IL, and IHB's connection with CNW at Proviso yard. The trackage rights were to become effective on March 6, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Stanko, Grand Trunk Western Railroad Company, 1333 Brewery Park Blvd., Detroit, MI 48207-2699, and Richard Hobbs, Indiana Harbor Belt Railroad Company, 2721 161st Street, P.O. Box 389, Hammond, IN 46325.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Wester Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 16, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-6663 Filed 3-22-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Advisory Commission on United Mine Workers of America Retiree Health Benefits; Meeting

A meeting of the Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits, established by Secretary Dole, will be held on April 11, 1990 in Conference Room S-2503, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC.

The meeting will begin at 10 a.m. The purpose of the meeting will be to consider the items listed below:

1. Discuss and approve procedures for receiving submissions from interested parties.
2. Discuss and approve procedures to govern Commission meetings.
3. Receive a briefing on the requirements of the Federal Advisory Committee Act.

4. Receive a briefing on the history of health care benefits in the bituminous coal industry.

5. Receive information on the state of the funds.

6. Receive a report on the status of major efforts to develop health care funding policy options.

7. Discuss and approve a preliminary list of issues to be considered by the Commission.

8. Identify materials to be prepared, and tasks to be performed, by individual Commission members.

Members of the public are invited to attend the proceedings. Due to the limited seating capacity, admittance will be made on a first-come basis. Data, views or arguments pertaining to the business before the Commission should be submitted in writing, on or before April 4, 1990, to Jan Horbaly, Executive Director, Advisory Commission on UMWA Retiree Health Benefits, U.S. Department of Labor, Room S2508B, 200 Constitution Avenue, NW., Washington, DC 20210. Twenty copies of each submission are needed for distribution.

Signed at Washington, DC this 19th day of March, 1990.

Jan Horbaly,

Executive Director, Advisory Commission on UMWA Retiree Health Benefits.

[FR Doc. 90-6602 Filed 3-22-90; 8:45 am]

BILLING CODE 4510-29-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1,

Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., Room S-3014,
Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. MT90-2, dated January 5, 1990.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Iowa:	
IA89-11 (IA90-11)	p. 56a, p. 56b.
Wisconsin:	
WI89-17 (WI90-17)	p. 1243, p. 1244.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:	
CT90-1 (Jan. 5, 1990)	p. 63, pp. 64-75.
Pennsylvania:	
PA90-10 (Jan. 5, 1990)	p. 1005, p. 1006.
Rhode Island:	
RI90-1 (Jan. 5, 1990)	p. 1105, p. 1106.
West Virginia:	
WV90-2 (Jan. 5, 1990)	p. 1391, p. 1395.
WV90-3 (Jan. 5, 1990)	p. 1415, p. 1418.

Volume II

Arkansas:	
AR90-8 (Jan. 5, 1990)	p. 15, p. 16.
Iowa:	
IA90-1 (Jan. 5, 1990)	p. 17, pp. 18, 20.
IA90-4 (Jan. 5, 1990)	p. 33, p. 34.
IA90-5 (Jan. 5, 1990)	p. 37, pp. 39-40, p. 42.
Ohio:	
OH90-2 (Jan. 5, 1990)	p. 791, pp. 792-811.
Texas:	
TX90-18 (Jan. 5, 1990)	p. 1029, p. 1030.

Volume III

Alaska:	
AK90-1 (Jan. 5, 1990)	p. 1, p. 2.
Idaho:	
ID90-1 (Jan. 5, 1990)	p. 147, p. 148.
Montana:	
MT90-1 (Jan. 5, 1990)	p. 171, pp. 172-173, p. 175.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 16th day of March, 1990.

Alan L. Moss,
Director, Division of Wage Determinations.

[FR Doc. 90-6459 Filed 3-22-90; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships Prescreening Section) to the National Council on the Arts will be held on March 29-30, 1990, from 9 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 20, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 90-6734 Filed 3-22-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Evaluation of Agreement State Radiation Control Programs; Proposed General Statement of Policy

AGENCY: Nuclear Regulatory
Commission.

ACTION: Proposed revision to general
statement of policy.

SUMMARY: The Nuclear Regulatory Commission proposes to revise its general statement of policy, "Guidelines for NRC Review of Agreement State Radiation Control Programs." The proposed revision to the guidelines was prepared by the NRC to incorporate changes specifically related to the regulation of low-level radioactive waste disposal in permanent disposal

facilities. This statement of policy is being proposed to inform the States and the public of the criteria and guidelines which the Commission intends to use in its periodic evaluations of Agreement State programs, including, where appropriate, the low-level radioactive waste disposal program. The Commission considers that these revisions are necessary given the present and potential low-level waste regulatory responsibility in Agreement States and is requesting comments on them.

DATES: Comments are due on or before May 22, 1990.

ADDRESSES: Written comments may be mailed to The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to the Commission at 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level) Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, State Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-0326.

SUPPLEMENTARY INFORMATION: On June 4, 1987, the NRC published in the Federal Register final revisions to its General Statement of Policy, "Guidelines for Evaluation of Agreement State Radiation Control Programs" (52 FR 21132). The guidance as supplemented in that general statement of policy was intended to apply to the review of all aspects of Agreement State Radiation Control Programs, including uranium and thorium recovery programs and low-level radioactive waste management programs.

In the review of low-level waste disposal control programs within the framework of the current guidelines, it has become apparent that some aspects of the low-level waste disposal control program for States regulating the disposal of low-level radioactive waste in permanent disposal facilities would benefit from guidelines which are more specific to those activities. This circumstance, coupled with the fact that by 1993 as many as 14 additional Agreement States may be licensing the disposal of low-level waste in permanent disposal facilities in compliance with the requirements of the Low-Level Radioactive Waste Policy Amendments Act of 1985, has prompted

this proposed revision. All Agreement State Radiation Control Programs have regulatory responsibilities related to radioactive waste. However, in non-sited states, these responsibilities related primarily to waste generation and transportation activities.

The NRC is proposing herein additional revisions to its General Statement of Policy, "Guidelines for Evaluation of Agreement State Programs," in order to specifically address the process for review of State programs which regulate the disposal of low-level radioactive waste in permanent disposal facilities. The revision will also be of use in reviewing State programs which regulate the packaging, treatment, storage, processing, and transportation of low-level radioactive waste. The supplemental guidance takes into account the regulatory requirements of 10 CFR part 61 and the experience of States with low-level radioactive waste regulatory programs. The guidance is considered to be flexible enough to be responsive to low-level radioactive waste disposal control programs which predated 10 CFR part 61.

Suggested major revisions in the guidelines are in the form of additional considerations for States regulating the disposal of low-level radioactive waste in permanent disposal facilities. These proposed revisions are not intended to change the policy or procedures by which other aspects of an Agreement State's radiation control program (RCP) is reviewed. The revisions are highlighted by arrows to facilitate identification of the changes to the guidelines. The NRC in the development of these revisions received input from State radiation control programs. A preliminary draft of the proposed revisions were sent to all 50 States. Comments were received from 21 States and these comments were incorporated where appropriate.

Major revisions suggested for States regulating the disposal of low-level radioactive waste in permanent disposal facilities and the reasons for the suggested revisions are as follows:

Legislation and Regulations

1. Agreement States should have clear legal authority to issue regulations for low-level radioactive waste management and disposal and to regulate disposal pursuant to applicable laws and regulations. Further, statutes should provide for the separation of the regulatory function from the development and operational functions. In many States which will be regulating the disposal of low-level waste in permanent disposal facilities, existing

legislation which establishes the authority of the State RCP may be adequately broad. However, because of the complexity and diversity of low-level radioactive waste (LLW) regulation, it is essential that States which will have the responsibility of regulating the disposal of LLW in permanent disposal facilities revisit their enabling legislation and effect changes if necessary.

States which will be hosting facilities for waste disposal have chosen diverse paths to implement the developmental and operational responsibilities for disposal under the Low-Level Radioactive Waste Policy Act. In the early stages of program development, it is sometimes difficult for States to separate the developmental and operational functions from the regulatory functions. The Commission considers separation of the regulatory function from the developmental and operational waste management functions essential to assure the avoidance of conflict of interest and, ultimately, to protect public health and safety. Therefore, State statutes addressing radioactive waste management should clearly distinguish between and provide a mechanism for separation of waste management regulatory functions and waste management developmental and operational functions for the disposal of low-level radioactive waste in permanent disposal facilities.

Organization

1. The Commission suggests a new Category II indicator, "Contractual Assistance," for State regulating the disposal of low-level radioactive waste in permanent disposal facilities. The indicator stresses the importance of having the capability to acquire a broad range of technical and vendor services on a timely basis. Regarding the regulation of LLW in permanent disposal facilities, these services are likely to be both radiological and non-radiological in nature. Because of the potential for conflict of interest, the Commission also suggests that the RCP avoid contractors which are affiliated in some way with the developmental or operational aspects of LLW management at permanent disposal facilities.

Management and Administration

1. Within the indicator "Quality of Emergency Planning" the Commission recommends an emergency response plan specifically addressing emergencies associated with low-level waste for States regulating the disposal of low-level radioactive waste in

permanent disposal facilities. The diversity of activities associated with the transportation, handling, storage, and disposal of LLW suggests the potential for both radiological and non-radiological emergencies or unusual which should be covered in the State RCP radiological emergency response plan. The plan should at a minimum be reassessed in light of LLW regulatory responsibilities and its content evaluated against plausible LLW emergencies (spills, fires, sudden releases to the biosphere, etc.).

2. Within the indicator "Budget," the Commission recommends adequate budgetary resources in the RCP. It should be recognized that the level of effort required of the RCP in States regulating the disposal of low-level radioactive waste in permanent disposal facilities will be a function of the life cycle of a low-level waste disposal facility. During licensing and operations, the regulatory program will be more resource intensive than during site development or post-closure. A State should have adequate budgetary resources to respond to the changing needs of the RCP in a way that is not disruptive to the program's mission. During resource intensive periods where growth is mandated, the budget should allow for the orderly mobilization of personnel and contractual resources as well as goods and services. During periods when less resources are required, the budget should allow for orderly demobilization that has minimal impact on employee morale.

3. Within the indicator "Laboratory Support," the Commission recommends a diversity of laboratory services beyond those normally associated with a State RCP for States regulating the disposal of low-level radioactive waste in permanent disposal facilities. Since the non-radiological performance of waste packages and engineering materials can affect the potential for radioactive releases from a waste site, the RCP should have access to laboratory facilities which can test the performance of the packages and materials. In addition, environmental monitoring associated with regulation of waste facilities involves a diversity of sampling media, sampling procedures, and testing procedures for both radioactive and non-radioactive constituents. Laboratory facilities should be available which can respond to this diversity of environmental monitoring needs.

4. Within the indicator "Management," the Commission recommends the use of an overall project manager for complex licensing

actions. This recommendation is particularly applicable to the review of an initial license application or major amendment for a low-level radioactive waste permanent disposal facility. The project manager should have training or experience in one or more of the main disciplines related to the technical reviews which he will be coordinating such as health physics, engineering, earth science or environmental science. The complexity and diversity of reviews associated with such an action suggest the need for one individual to plan the work effort, mobilized and direct the resources, specify level of effort and desired end products, assemble and integrate the results of technical reviews, and promulgate the results. Depending on the State's organizational structure, the results may be in the form of a licensing decision made by the project manager in concert with his or her immediate management or in the form of recommendations passed on to an independent licensing authority.

5. Within the indicator "Office Equipment and Supplies," the Commission suggests that a license document management system may be useful for dealing with the diversity and volume of documents associated with a LLW disposal licensing action. This may be as simple as an upgraded filing system which is responsive to all the various categories of LLW documents. In its extreme it could be a highly sophisticated electronic data management system with a continuing need for database management. Regardless, the Commission believes that such a document management system greatly facilitates the licensing process.

6. Within the indicator "Public Information," the Commission recommends public involvement in major licensing actions associated with a LLW facility. Public involvement has become a vital entity in the decision making process within developmental aspects of low-level waste management. It is the opinion of the Commission that this involvement can and should carry over into the licensing process. The public should be informed of major licensing issues, given an opportunity to comment on or supplement those issues, and given an opportunity to participate in the resolution of those issues.

Personnel

1. The Commission considers the cornerstone of an effective low-level waste disposal regulatory program for States is a staff with training and experience in key technical disciplines related to waste management. At a minimum these include health physics or

radiation protection, engineering, earth science, and environmental science. The Commission considers that there are a number of specialty areas within these umbrella disciplines and other separate technical areas which must be addressed in the process of licensing and regulation of low-level waste disposal. However, the Commission understands that it is unrealistic to expect that State RCP will be represented by all of these disciplines on a full-time basis. It is more realistic to expect that the various specialty disciplines will be accessed on a case specific basis through a contract or an interagency agreement. The Commission does consider a cadre of full-time staff with training and experience in the general backgrounds specified above necessary to direct the various specialists, to understand and evaluate their products, to integrate those products into a regulatory support document, and to take regulatory action based on the results of these activities.

2. Within the indicator "Qualifications of Technical Staff," the Commission recommends the use of engineers, earth scientists, and environmental scientists for States regulating the disposal of low-level radioactive waste in addition to staff with the type of training and experience usually associated with a State RCP, as discussed above.

3. Within the indicator "Staffing Level," the Commission recommends an RCP staff effort of 3-4 professional technical person-years for the regulation of the operation of low-level radioactive waste disposal facilities. Staff resources should be adequate to conduct inspections on a routine basis during operation of the LLW facility, including inspection of incoming shipments and license site activities. The staff reiterates that, during certain key periods, the RCP will need to be augmented with additional staff or consultants.

4. Within the indicator "Training," the Commission recommends that the State take advantage of opportunities for specialized training for staff responsible for regulation of uranium mill programs and low-level waste programs. This represents no change in the guidelines related to mill programs. It does seek to emphasize the diversity of regulatory activities associated with waste disposal in permanent facilities and, in many cases, the difference in these activities from those normally associated with the radiation control program. Specialized training in response to these differences is suggested.

Licensing

1. Within the indicator "Technical Quality of Licensing Actions," the Commission recommends the addition of specific guidelines related to the technical quality of licensing actions associated with the disposal of low-level radioactive waste. The additional guidelines are intended to address the elements of LLW licensing that may not be otherwise addressed in radioactive materials or facilities licensing. These include such elements as: (1) waste product and volume; (2) personnel qualifications; (3) facilities and equipment; (4) operating and emergency procedures; (5) applicant's financial qualifications and assurances; (6) closure and decommissioning procedures; and (7) institutional arrangements with other institutions.

2. Within the indicator "Adequacy of Product Evaluations," the Commission recommends the systematic documentation of the approval process for waste packages, solidification and stabilization processes, or other vendor products employed to treat radioactive waste for disposal. Within the 10 CFR Part 61 systems approach to radioactive waste disposal, the Commission considers the waste form to be a vital component of waste containment. For this reason, approval of the systems, components, and products which comprise the waste form is as important to the overall performance of the permanent waste disposal facility as the approval of the facility itself.

3. Within the indicator "Licensing Procedures," the Commission recommends the development and use of licensing guides, standards, and procedures which apply specifically to LLW licensing. The reason for this recommendation relates to the uniqueness and complexity of the LLW licensing process. Specific procedures and approval standards will facilitate the licensing process for both the licensee and the regulator by allowing a common understanding of the process by which an application will be reviewed and the standards against which an application will be evaluated.

Compliance

1. Within the indicator "Status of Inspection Program," the Commission specifies that inspection procedures in all Agreement States should provide for the inspection of licensees' waste generation activities under the State's jurisdiction. The Commission recognizes that States regulating the disposal of low-level radioactive wastes within their borders have little, if any, means to assure that wastes entering from

another State has been properly classified, packaged, and labelled. Implementation of 10 CFR part 61 requirements for classification, treatment, packaging, and labelling of low-level radioactive waste by waste generators is considered a cornerstone of the systems approach to radioactive waste management. Therefore, the Commission considers that all agencies which regulate waste generator activities have the primary obligation to ensure, through their regulatory activities, that generators are in compliance with these requirements.

2. Within the indicator "Status of Inspection Program," the Commission recommends that the RCP should include provisions for the various types of inspections that will be required during the various phases of the LLW facility life cycle. Many of the inspections associated with a LLW facility will be non-radiological in nature, concerned instead with construction practices, performance of engineering materials and engineered systems, and verification of system performance. This suggests the need for the multidisciplinary approach to compliance assessment that is suggested in other parts of the regulatory program.

In addition, inspections should be conducted on a routine basis during the operation of the LLW facility, including inspection of incoming shipments and licensee site activities.

3. Within the indicator "Inspectors Performance and Capability," the Commission recommends multidisciplinary team inspections. The reason for this recommendation is discussed in 2 above.

4. Within the indicator "Confirmatory Measurements," the Commission recommends that the RCP for States regulating the disposal of low-level radioactive waste facilities have the capability of confirming non-radiological as well as radiological aspects of licensed operations. Because of the importance of soils and engineering materials in overall facility performance, the RCP should have the capability of confirming performance of the materials. Furthermore, because of the diversity of material which will be disposed of at the facility, it is important that the RCP be able to confirm the presence or absence of both radiological and non-radiological constituents in environmental analyses.

GUIDELINES FOR NRC REVIEW OF AGREEMENT STATE RADIATION CONTROL PROGRAMS, 1990

Introduction

Section 274 of the Atomic Energy Act was enacted by the Congress in 1959 to recognize the interests of the States in atomic energy, to clarify the respective responsibilities of State and Federal Governments, and to provide a mechanism for States to enter into formal agreements with the Atomic Energy Commission (AEC), and later the U.S. Nuclear Regulatory Commission (NRC), under which the States assume regulatory authority over byproduct, source, and small quantities of special nuclear materials, collectively referred to as agreement materials. The mechanism by which the NRC discontinues and the States assume regulatory authority over agreement materials is an Agreement between the Governor of a State and the Commission. Before entering into an Agreement, the Governor is required to certify that the State has a regulatory program that is adequate to protect the public health and safety. In addition, the Commission must perform an independent evaluation and make a finding that the State's program is adequate from the health and safety standpoint and compatible with the Commission's regulatory program.

Current Guidelines

In 1981, the Commission published a major revision of the guide for review of Agreement State programs (two earlier revisions reflected primarily minor and editorial changes). These Guidelines constitute Commission policy in the form of a document entitled "Guidelines for NRC Review of Agreement State Radiation Control Programs." This document provides guidance for evaluation of operating Agreement State programs based on over 20 years of combined AEC-NRC experience in administering the Agreement State program. In 1985, Commission staff initiated minor updating, clarifying and editorial changes reflecting the experience gained with the 1981 policy statement. ▶ Those changes were promulgated in June 1987. ◀

▶ In 1988, the Commission staff initiated revisions to the Review Guidelines to improve reviews of State regulatory programs for the disposal of low-level radioactive waste. The revised document will be used by NRC in its review of those State programs which regulate the disposal of low-level radioactive waste in permanent disposal facilities. It will also be used to

strengthen the review of State programs which regulate other aspects of radioactive waste management, such as packaging, treatment, storage and transportation. ◀

The "Guidelines" contain six sections, each dealing with one of the essential elements of a radiation control program (RCP) which are: Legislation and Regulations, Organization, Management and Administration, Personnel, Licensing, and Compliance. Each section contains (a) a summary of the general significance of the program element, (b) indicators which address specific functions within the program element, and (c) guidelines which delineate specific objectives or operational goals under each indicator.

Categories of Indicators

The indicators listed in this document cover a wide range of program functions, both technical and administrative. It should be recognized that the indicators, and the guidelines under each indicator, are not of equal importance in terms of the fundamental goal of a radiation control program, i.e., protection of the public health and safety. Therefore, the indicators are categorized in terms of their importance to the fundamental goal of protecting the public health and safety. Two categories are used.

Category I—Direct Bearing on Health and Safety. Category I Indicators (and the Program Elements of which they are a part) are:

- Legal Authority (Legislation and Regulations)
- Status and Compatibility of Regulations (Legislation and Regulations)
- Quality of Emergency Planning (Management and Administration)
- Technical Quality of Licensing Actions (Licensing)
- Adequacy of Product Evaluations (Licensing)
- Status of Inspection Program (Compliance)
- Inspection Frequency (Compliance)
- Inspectors' Performance and Capability (Compliance)
- Response to Actual and Alleged Incidents (Compliance)
- Enforcement Procedures (Compliance)

These indicators address primary program functions which directly relate to the State's ability to protect the public health and safety. If significant problems exist in one or more Category I indicator areas, then the need for improvements may be critical. Legislation and regulations together form the foundation for the entire program establishing the framework for the licensing and compliance programs.

The technical review of license applications is the initial step in the regulatory process. The evaluation of applicant qualifications, facilities, equipment, and procedures by the regulatory agency is essential to assure protection of the public from radiation hazards associated with the proposed activities. Assuring that licensees fulfill the commitments made in their applications and that they observe the requirements set forth in the regulations is the objective of the compliance program. The essential elements of an adequate compliance program are (1) the conduct of onsite inspections of licensee activities, (2) the performance of these inspections by competent staff, and (3) the taking of appropriate enforcement actions. Another very important factor is the ability to plan for, respond effectively to, and investigate radiation incidents.

Category II—Essential Technical and Administrative Support. Category II Indicators (and the Program Elements of which they are a part) are:

- Location of Radiation Control Program Within State Organization (Organization)
- Internal Organization of Radiation Control Program (Organization)
- Legal Assistance (Organization)
- Technical Advisory Committees (Organization)
- Contractual Assistance (Organization)
- Budget (Management and Administration)
- Laboratory Support (Management and Administration)
- Administrative Procedures (Management and Administration)
- Management (Management and Administration)
- Office Equipment and Support Services (Management and Administration)
- Public Information (Management and Administration)
- Qualifications of Technical Staff (Personnel)
- Staffing Level (Personnel)
- Staff Supervision (Personnel)
- Training (Personnel)
- Staff Continuity (Personnel)
- Licensing Procedures (Licensing)
- Inspection Procedures (Compliance)
- Inspection Reports (Compliance)
- Confirmatory Measurements (Compliance)

These indicators address program functions which provide essential technical and administrative support for the primary program functions. Good performance in meeting the guidelines for these indicators is essential in order to avoid the development of problems in one or more of the primary program functions, i.e., those that fall under

Category I indicators. Category II indicators frequently can be used to identify underlying problems that are causing, or contributing to, difficulties in Category I indicators.

It is the NRC's intention to use these categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety and is compatible with the NRC's program. If one or more significant Category I comments are provided, the State will be notified that the program deficiencies may seriously affect the State's ability to protect the public health and safety and that the need of improvement in particular program areas is critical. The NRC would request an immediate response. If, following receipt and evaluation, the State's response appears satisfactory in addressing the significant Category I comments, the staff may offer finding of adequacy and compatibility as appropriate or defer such offering until the State's actions are examined and their effectiveness confirmed in a subsequent review. If additional information is needed to evaluate the State's actions, the staff may request the information through follow-up correspondence or perform a follow-up or special, limited review. NRC staff may hold a special meeting with appropriate State representatives. No significant items will be left unresolved over a prolonged period. If the State program does not improve or if additional significant Category I deficiencies have developed, a staff finding that the program is not adequate will be considered and the NRC may institute proceedings to suspend or revoke all or part of the Agreement in accordance with Section 274j of the Act. The Commission will be informed of the results of the reviews of the individual Agreement State programs and copies of the review correspondence to the States will be placed in the NRC Public Document Room.

Category II comments concern functions and activities which support the State program and therefore would not be critical to the State's ability to protect the public. The State will be asked to respond to these comments and the State's actions will be evaluated during the next regular program review.

It should be recognized that the categorization pertains to the significance of the overall indicator and not to each of the guidelines within that indicator. For example, "Technical

Quality of Licensing Actions" is a Category I indicator. The review of license applications for the purpose of evaluating the applicant's qualifications, facilities, equipment, and procedures is essential to assuring that the public health and safety is being protected. One of the guidelines under this indicator concerns precertification visits. The need for such visits depends on the nature of the specific case and is a matter of judgment on the part of the licensing staff. The success of a State program in meeting the overall objective of the indicator does not depend on literal adherence to each recommended guideline.

The "Guidelines for NRC Review of Agreement State Radiation Control Programs" will be used by the NRC staff during its onsite reviews of Agreement State programs. ▶ At least once each year, there will be onsite communication between the NRC staff and each State either as a result of a routine review or a review site visit. A routine review is a total assessment of each Agreement State program and is conducted at least biannually. A review visit is a trip to the Agreement State to assess the status of the State program and to address any special concerns within the State program. Additional contacts may also be made through special or follow-up reviews. ◀

In making a finding of adequacy, the NRC considers areas of the State program which are critical to protection of the public health and safety. For example, a State that is not carrying out its inspection program, or fails to respond to significant radiological incidents would not be considered to have a program adequate to protect the public health and safety. Basic radiation protection standards, such as exposure limits, also directly affect the State's ability to protect public health and safety. The NRC feels that it is important to strive for a high degree of uniformity in technical definitions and terminology, particularly as related to units of measurement and radiation dose. Maximum permissible doses and levels of radiation and concentrations of radioactivity in unrestricted areas as specified in 10 CFR part 20 are considered to be important enough to require States to be essentially equivalent in this area in order to protect public health and safety.

Certain procedures, such as those involving the licensing of products containing radioactive material intended for interstate commerce, also require a high degree of uniformity. If no serious performance problems are found in an Agreement State program and if its

standards and program procedures are compatible with the NRC program, a finding of adequacy and compatibility is made.

▶ It should be noted that the categories of indicators, and the significance thereof, apply equally to the regulation of uranium and thorium recovery and associated wastes, low-level radioactive waste management, as well as the overall radiation control program. Any differences in the guidelines for review of uranium mill tailings programs or low-level waste programs are specified within the individual program elements. ◀

Program Element: Legislation and Regulations

The effectiveness of any State radiation control program (RCP) is dependent upon the underlying authority granted the RCP in State legislation, and implemented in the State regulations. Regulations provide the foundation upon which licensing, inspection, and enforcement decisions are made. Regulations also provide the standards and rules by which the licensee must operate. Periodic revisions are necessary to reflect changing technology, improved knowledge, current recommendations by technical advisory groups, and consistency with NRC regulations. Procedures for providing input to the NRC on proposed changes to NRC regulations are necessary to assure consideration of the State's interests and requirements. The public and, in particular, affected classes of licensees should be granted the opportunity and time to comment on rule changes.

Indicators and Guidelines

Legal Authority (Category I)

- Clear statutory authority should exist, designating a State radiation control agency and providing for promulgation of regulations, licensing, inspection and enforcement.
- States regulating uranium or thorium recovery and associated wastes pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) must have statutes enacted to establish clear authority for the State to carry out the requirements of UMTRCA.

▶ • States regulating the disposal of low-level radioactive waste in permanent disposal facilities must have statutes that provide authority for the issuance of regulations for low-level waste management and disposal. The statutes should also provide regulatory program authority and provide for the separation of regulatory functions from

developmental and operational functions. ◀

Status and Compatibility of Regulations (Category I)

- The State must have regulations essentially identical to 10 CFR parts 19 and 20 (radiation dose standards, effluent limits, waste manifest rule and certain other parts), Part 61 (technical definitions and requirements, performance objectives, financial assurances) and those required by UMTRCA, as implemented by part 40.
- The State should adopt other regulations to maintain a high degree of uniformity with NRC regulations.
- For those regulations deemed a matter of compatibility by NRC, State regulations should be amended as soon as practicable but no later than three years.
- The RCP has established procedures for effecting appropriate amendments to State regulations in a timely manner, normally within three years of adoption by NRC.
- Opportunity should be provided for the public to comment on proposed changes (required by UMTRCA for uranium mill regulation).
- Pursuant to the terms of the Agreement, opportunity should be provided for the NRC to comment on draft changes in State regulations.

Program Element: Organization

The effectiveness of any State RCP may be dependent upon its location within the overall State organizational structure. The RCP should be in a position to compete effectively with other health and safety programs for budget and staff. Program management must have access to individuals or groups which establish health and safety program priorities. The RCP should be organized to achieve a high degree of efficiency in supervision, work functions, and communications.

Indicators and Guidelines

Location of Radiation Control Program Within State Organization (Category II)

- The RCP should be located in a State organization parallel with comparable health and safety programs. The Program Director should have access to appropriate levels of State management.

▶ ¹ The level of separation (e.g., separate agencies) should be determined for each State individually. In selecting this level, each State should have a system of checks to demonstrate that conflicts of interest between the regulatory function and developmental and operational functions will not occur. ◀

- Where regulatory responsibilities are divided between State agencies, clear understandings should exist as to division of responsibilities and requirements for coordination.

Internal Organization of Radiation Control Program (Category II)

- The RCP should be organized with the view toward achieving an acceptable degree of staff efficiency, place appropriate emphasis on major program functions, and provide specific lines of supervision from program management for the execution of program policy.

- Where regional offices or other government agencies are utilized, the lines of communication and administrative control between these offices and the central office (Program Director) should be clearly drawn to provide uniformity in licensing and inspection policies, procedures and supervision.

Legal Assistance (Category II)

- Legal staff should be assigned to assist the RCP or procedures should exist to obtain legal assistance expeditiously. Legal staff should be knowledgeable regarding the RCP program, statutes, and regulations.

Technical Advisory Committees (Category II)

- Technical committees, Federal agencies, and other resource organizations should be used to extend staff capabilities for unique or technically complex problems.

- A State Medical Advisory Committee should be used to provide broad guidance on the uses of radioactive drugs in or on humans. The Committee should represent a wide spectrum of medical disciplines. The Committee should advise the RCP on policy matters and regulations related to use of radioisotopes in or on humans.

- Procedures should be developed to avoid conflict of interest, even though committees are advisory. This does not mean that representatives of the regulated community should not serve on advisory committees or not be used as consultants.

Contractual Assistance (Category II)

- Because of the diversity and complexity of low-level radioactive waste disposal licensing and regulation, States regulating the disposal of low-level radioactive waste in permanent disposal facilities should have procedures and mechanisms in place for timely acquisition of technical and vendor services necessary to support

these functions that are not otherwise available within the RCP. ◀

- The RCP should avoid the selection of contractors who have been selected to provide developmental or operational services associated with the LLW facility.

Program Element: Management and Administration

State RCP management must be able to meet program goals through strong, direct leadership at all levels of supervision. Administrative procedures are necessary to assure uniform and appropriate treatment of all regulated parties. Procedures for receiving information on radiological incidents, emergency response, and providing information to the public are necessary. Procedures to provide feedback to supervision on status and activities of the RCP are necessary. Adequate facilities, equipment and support services are needed for optimum utilization of personnel resources. Laboratory support services should be administered by the RCP or be readily available through established administrative procedures.

In order to meet program goals, a State RCP must have adequate budgetary support. The total RCP budget must provide adequate funds for salaries, travel costs associated with the compliance program, laboratory and survey instrumentation and other equipment, contract services, and other administrative costs. The program budget must reflect annual changes in the number and complexity of applications and licenses, and the increase in costs due to normal inflation.

Indicators and Guidelines

Quality of Emergency Planning (Category I)

- The State RCP should have a written plan in response to incidents at licensee facilities which takes into account such incidents as spills, overexposures, transportation accidents, fire or explosion, theft, etc. ► Plans for States regulating the disposal of low-level radioactive waste in permanent disposal facilities should include response to emergencies associated with the disposal of low-level radioactive waste. ◀

- The plan should define the responsibilities and actions to be taken by State agencies. The plan should be specific as to persons responsible for initiating response actions, conducting operations and cleanup.

- Emergency communication procedures should be adequately established with appropriate local,

county and State agencies. Plans should be distributed to appropriate persons and agencies. NRC should be provided the opportunity to comment on the plan while in draft form.

- The plan should be reviewed annually by Program staff for adequacy and to determine that content is current. Periodic drills should be performed to test the plan.

Budget (Category II)

- Operating funds should be sufficient to support program needs such as staff travel necessary to the conduct of an effective compliance program, including routine inspections, follow-up or special inspections, (including pre-licensing visits) and responses to incidents and other emergencies, instrumentation and other equipment to support the RCP, administrative costs in operating the program including rental charges, printing costs, laboratory services, computer and/or word processing support, preparation of correspondence office equipment, hearing costs, etc., as appropriate. ► States regulating the disposal of low-level radioactive waste in permanent disposal facilities should have adequate budgetary resources to allow for changes in funding needs during the LLW facility life cycle. The sources of program funding should be stable and protected from competition from or invasion by other State programs. ◀

- Principal operating funds should be from sources which provide continuity and reliability, i.e., general tax, license fees, etc. Supplemental funds may be obtained through contracts, cash grants, etc.

Laboratory Support (Category II)

- The RCP should have laboratory support capability in house, or readily available through established procedures, to conduct bioassays, analyze environmental samples, analyze samples collected by inspectors, etc. on a priority established by the RCP.

- In addition, States regulating the disposal of low-level radioactive waste in permanent disposal facilities should have access to laboratory support for radiological and non-radiological analyses associated with the licensing and regulation of low-level waste disposal, including testing of soils, testing of environmental media, testing of engineering properties of waste packages and waste forms, and testing of other engineering materials used in the disposal of low-level radioactive waste. ◀

Administrative Procedures (Category II)

- The RCP should establish written internal policy and administrative procedures to assure that program functions are carried out as required and to provide a high degree of uniformity and continuity in regulatory practices. These procedures should address internal processing of license applications, inspection policies, decommissioning and license termination, fee collection, contacts with communication media, conflict of interest policies for employees, exchange-of-information and other functions required of the program. Administrative procedures are in addition to the technical procedures utilized in licensing, and inspection and enforcement.

Management (Category II)

- Program management should receive periodic reports from the staff on the status of regulatory actions (backlogs, problem cases, inquiries, regulation revisions).
- RCP management should periodically assess workload trends, resources and changes in legislative and regulatory responsibilities to forecast needs for increased staff, equipment, services and funding.
- Program management should perform periodic reviews of selected license cases handled by each reviewer and document the results. Complex licenses (major manufacturers, ► low-level radioactive waste disposal facilities, ◀ Type A broad scope license, and any licenses which have the potential for significant releases to the environment) should receive second party review (supervisory, committee, consultant). Supervisory review of inspections, reports and enforcement actions should also be performed.
- For the implementation of very complex licensing actions, such as initial license reviews, license renewals and licensing actions associated with a low-level radioactive waste disposal facility, there should be an overall Project Manager responsible for the coordination and compilation of the diverse technical reviews necessary for the completion of the licensing action. The Project Manager should have training or experience in one or more of the main disciplines related to the technical reviews which the Project Manager will be coordinating, such as engineering, earth science or environmental science. ◀
- When regional offices or other government agencies are utilized, program management should conduct periodic audits of these offices.

Office Equipment and Support Services (Category II)

- The RCP should have adequate secretarial and clerical support. Automatic typing and Automatic Data Processing and retrieval capability should be available to large (greater than 300-400 licenses) programs. Similar services should be available to regional offices, if utilized.

►• States regulating the disposal of low-level radioactive waste in permanent disposal facilities should develop and implement a license document management system commensurate with the volume and diversity of materials associated with a low-level waste disposal facility license. ◀

- Professional licensing, inspection, and enforcement staff should not be used for fee collection and other clerical duties.

Public Information (Category II)

- Inspection and licensing files should be available to the public consistent with State administrative procedures. It is desirable, however, that there be provisions for protecting proprietary information and clearly personal information from public disclosure.
- Opportunity for public hearings should be provided in accordance with UMTRCA and applicable State administrative procedure laws during the process of major licensing actions associated with UMTRCA and low-level radioactive waste in permanent disposal facilities.

Program Element: Personnel

The RCP must be staffed with a sufficient number of trained personnel. The evaluation of license applications and the conduct of inspections require staff with in-depth training and experience in radiation protection and related subjects. ► In addition, in States regulating low-level radioactive waste facilities, the RCP should be staffed with individuals with training and experience in engineering, earth science, and environmental science. ◀ The staff must be adequate in number to assure licensing, inspection, and enforcement actions of appropriate quality to assure protection of the public health and safety. Periodic training of existing staff is necessary to maintain capabilities in a rapidly changing technological environment. Program management personnel must be qualified to exercise adequate supervision in all aspects of a State radiation control program.

Indicators and Guidelines**Qualifications of Technical Staff (Category II)**

- Professional staff should have bachelor's degree or equivalent training in the physical and/or life sciences. Additional training and experience in radiation protection for senior personnel including the director of the radiation protection program should be commensurate with the type of licenses issued and inspected by the State. ► For States regulating uranium mills and mill tailings, staff training and experience should also include hydrology, geology, and structural engineering.² For programs which regulate the disposal of low-level radioactive waste in permanent facilities, staff training and experience should include civil or mechanical engineering, geology, hydrology, and other earth science, and environmental science. ◀
- Written job descriptions should be prepared so that professional qualifications needed to fill vacancies can be readily identified.

Staffing Level (Category II)

- Professional staffing level should be approximately 1-1.5 persons-years per 100 licenses in effect. The RCP must not have less than two professionals available with training and experience to operate the RCP in a way which provides continuous coverage and continuity.
- For States regulating uranium mills and mill tailings, current indications are that 2-2.75 professional person-years of effort, (including in situ mills) or major renewal, to meet requirements of Uranium Mill Tailings Radiation Control Act of 1978.
- States which regulate the disposal of low-level radioactive waste in permanent disposal facilities should allow an annual baseline RCP staff effort of 3-4 professional technical person-years. Staff resources should be adequate to conduct inspections on a routine basis during operation of the LLW facility, including inspection of incoming shipments and licensee site activities. During periods of peak activity, additional staff or specialty consultants should be available on a timely basis. For example, processing a license application would require a minimum of eight staff-years, plus contractual assistance, to complete a

² Additional guidance is provided in the Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement (46 FR 7540; January 23, 1981, 46 FR 36969; July 16, 1981, and 48 FR 33376; July 25, 1983).

review within 15 months from the date of receipt of the application, as required under section 9(2) of the Low-Level Radioactive Waste Policy Amendments Act of 1985. ◀

Staff Supervision (Category II)

- Supervisory personnel should be adequate to provide guidance and review the work of senior and junior personnel.
- Senior personnel should review applications and inspect licenses independently, monitor work of junior personnel, and participate in the establishment of policy.
- Junior personnel should be initially limited to reviewing license applications and inspecting small programs under close supervision.

Training (Category II)

- Senior personnel should have attended NRC core courses in licensing orientation, inspection procedures, medical practices and industrial radiography practices.
- The RCP should have a program to utilize specific short courses and workshops to maintain an appropriate level of staff technical competence in areas of changing technology.
- ▶• In States with regulatory responsibility for uranium mills or the disposal of low-level radioactive waste in permanent disposal facilities, staff should be afforded opportunities for training which is consistent with the needs of those programs. ◀

Staff Continuity (Category II)

- Staff turnover should be minimized by combinations of opportunities for training, promotions, and competitive salaries.
- Salary levels should be adequate to recruit and retain persons of appropriate professional qualifications. Salaries should be comparable to similar employment in the geographical area.
- The RCP organization structure should be such that staff turnover is minimized and program continuity maintained through opportunities for promotion. Promotion opportunities should exist from junior level to senior level or supervisory positions. There also should be opportunity for periodic salary increases compatible with experience and responsibility.

Program Element: Licensing

It is necessary in licensing by-product, source, and special nuclear materials that the State regulatory agency obtain information about the proposed use of nuclear materials, facilities and equipment, training and experience of personnel, and operating procedures

appropriate for determining that the applicant can operate safely and in compliance with the regulations and license conditions. An acceptable licensing program includes: preparation and use of internal licensing guides and policy memoranda to assure technical quality in the licensing program (when appropriate, such as in small programs, NRC Guides may be used); consultation and precertification inspection of complex facilities (e.g., waste disposal sites, mills, irradiators, etc.); and the implementation of administrative procedures to assure documentation and maintenance of adequate files and records.

Indicators and Guidelines

Technical Quality of Licensing Actions (Category I)

- The RCP should assure that essential elements of applications have been submitted to the agency, and that these elements meet current regulatory guidance for describing the isotopes and quantities to be used, qualifications of persons who will use material, facilities and equipment, and operating emergency procedures sufficient to establish the basis for licensing actions.
- ▶• Additionally, in States which regulate the disposal of low-level radioactive waste in permanent disposal facilities, the RCP should assure that essential elements of waste disposal applications meet current regulatory guidance for waste product and volume, qualifications of personnel, facilities and equipment, operating and emergency procedures, financial qualifications and assurances, closure and decommissioning procedures and institutional arrangements in a manner sufficient to establish a basis for licensing action. Licensing activities should be adequately documented including safety evaluation reports, product certifications or similar documentation of the license review and approval process. ◀
- Precertification visits should be made for complex and major licensing actions.
- Licenses should be clear, complete, and accurate as to isotopes, forms, quantities, authorized uses, and permissive or restrictive conditions.
- The RCP should have procedures for reviewing licenses prior to renewal to assure that supporting information in the file reflects the current scope of the licensed program.

Adequacy of Product Evaluations (Category I)

- RCP evaluations of manufacturer's or distributor's data on sealed sources and devices outlined in NRC, State or

appropriate ANSI Guides should be sufficient to assure integrity and safety for users.

- The RCP should review manufacturer's information in labels and brochures relating to radiation health and safety, assay, and calibration procedures for adequacy.
- Approval documents for sealed source or device designs should be clear, complete, and accurate as to isotopes, forms, quantities, uses, drawing identifications, and permissive or restrictive conditions.
- ▶• Approval documents for radioactive waste packages, solidification and stabilization media, or other vendor products used to treat radioactive waste for disposal should be complete and accurate as to the use, capabilities, limitations, and site specific restrictions associated with each product. ◀

Licensing Procedures (Category II)

- The RCP should have internal licensing guides, checklists, and policy memoranda consistent with current NRC practice.
- ▶• In States which regulate the disposal of low-level radioactive waste in permanent disposal facilities, the RCP should have program specific licensing guides, plans and procedures for license review, minimum approval standards, and policy memoranda which relate to specific aspects of waste disposal. The program should include the preparation of safety evaluation reports, product certifications, or similar documentation of license review and approval process. ◀
- License applicants (including applicants for renewals) should be furnished copies of applicable guides and regulatory positions.
- The present compliance status of licensees should be considered in licensing actions.
- Under the NRC Exchange-of-Information program, evaluation sheets, service licenses, and licenses authorizing distribution to general licensees should be submitted to NRC on a timely basis.
- Standard license conditions comparable with current NRC standard license conditions should be used to expedite and provide uniformity in the licensing process.
- Files should be maintained in an orderly fashion to allow fast, accurate retrieval of information and documentation of discussions and visits.

Program Element: Compliance

- Periodic inspections of licensed operations are essential to assure that

activities are being conducted in compliance with regulatory requirements and consistent with good safety practices. The frequency of inspections depends on the amount and the kind of material, the type of operation licensed, and the results of previous inspections. The capability of maintaining and retrieving statistical data on the status of the compliance program is necessary. The regulatory agency must have the necessary legal authority for prompt enforcement of its regulations. This may include, as appropriate, administrative remedies, orders requiring corrective action, suspension or revocation of licenses, the impounding of materials, and the imposing of civil or criminal penalties.

Indicators and Guidelines

Status of Inspection Program (Category I)

- State RCP should maintain an inspection program adequate to assess licensee compliance with State regulations and license condition. ► The inspection program in all States should provide for the inspection of licensee's waste generation activities under the State's jurisdiction. ◀

- In States which regulate the disposal of low-level radioactive waste in permanent disposal facilities, the RCP should include provisions for pre-operational, operational, and post-operational facility inspections. The inspections should cover all program elements which are relevant at the time of the inspection and be performed independently of any resident inspector program. In addition, inspections should be conducted on a routine basis during the operation of the LLW facility, including inspection of incoming shipments and licensee site activities. ◀

- The RCP should maintain statistics which are adequate to permit Program Management to assess the status of the inspection program on a periodic basis. Information showing the number of inspections conducted, the number overdue, the length of time overdue and the priority categories should be readily available.

- At least semiannual inspection planning should be done for number of inspections to be performed, assignments to senior versus junior staff, assignments to regions, identification of special needs and periodic status reports. When backlogs occur, the program should develop and implement a plan to reduce the backlog. The plan should identify priorities for inspections and establish target dates and milestones for assessing progress.

Inspection Frequency (Category I)

- The RCP should establish an inspection priority system. The specific frequency of inspections should be based upon the potential hazards of licensed operations, e.g., major processors and industrial radiographers should be inspected approximately annually. Smaller or less hazardous operations may be inspected less frequently. The minimum inspection frequency including for initial inspections should be no less than the NRC system.

Inspectors' Performance and Capability (Category I)

- Inspectors should be competent to evaluate health and safety problems and to determine compliance with State regulations. Inspectors must demonstrate to supervision an understanding of regulations, inspection guides, and policies prior to independently conducting inspections.

- For the inspection of complex licensed activities such as permanent low-level radioactive waste disposal facilities, a multidisciplinary team approach is desirable to assure a complete compliance assessment. ◀

- The compliance supervisor (may be RCP manager) should conduct annual field evaluations of each inspector to assess performance and assure application of appropriate and consistent policies and guides.

Response to Actual and Alleged Incidents (Category I)

- Inquiries should be promptly made to evaluate the need for onsite investigations.

- Onsite investigations should be promptly made of incidents requiring reporting to the Agency in less than 30 days, 10 CFR 20.403 types.

- For those incidents not requiring reporting to the Agency in less than 30 days, investigations should be made during the next scheduled inspection.

- Onsite investigations should be promptly made of non-reportable incidents which may be of significant public interest and concern, e.g., transportation accidents.

- Investigations should include in-depth reviews of circumstances and should be completed on a high priority basis. When appropriate, investigations should include reenactments and time-study measurements (normally within a few days). Investigation (or inspection) results should be documented and enforcement action taken when appropriate.

- State licensees and the NRC should be notified of pertinent information

about any incident which could be relevant to other licensed operations (e.g., equipment failure, improper operating procedures).

- Information on incidents involving failure of equipment should be provided to the agency responsible for evaluation of the device for an assessment of possible generic design deficiency.

- The RCP should have access to medical consultants when needed to diagnose or treat radiation injuries. The RCP should use other technical consultants for special problems when needed.

Enforcement Procedures (Category I)

- Enforcement Procedures should be sufficient to provide a substantial deterrent to licensee noncompliance with regulatory requirements. Provisions for the levying of monetary penalties are recommended.

- Enforcement letters should be issued within 30 days following inspections and should employ appropriate regulatory language clearly specifying all items of noncompliance and health and safety matters identified during the inspection and referencing the appropriate regulation or license condition being violated.

- Enforcement letters should specify the time period for the licensee to respond indicating corrective actions and actions taken to prevent reoccurrence (normally 20-30 days). The inspector and compliance supervisor should review licensee responses.

- Licensee responses to enforcement letters should be promptly acknowledged as to adequacy and resolution of previously unresolved items.

- Written procedures should exist for handling escalated enforcement cases of varying degrees.

- Impounding of material should be in accordance with State administrative procedures.

- Opportunity for hearings should be provided to assure impartial administration of the radiation control program.

Inspection Procedures (Category II)

- Inspection guides consistent with current NRC guidance, should be used by inspectors to assure uniform and complete inspection practices and provide technical guidance in the inspection of licensed programs. NRC Guides may be used if properly supplemented by policy memoranda, agency interpretations, etc.

- Written inspection policies should be issued to establish a policy for conducting unannounced inspections.

obtaining corrective action, following up and closing out previous violations, interviewing workers and observing operations, assuring exit interviews with management, and issuing appropriate notification of violations of health and safety problems.

- Procedures should be established for maintaining licensees' compliance histories.

- Oral briefing of supervisors or the senior inspector should be performed upon return from non-routine inspections.

- For States with separate licensing and inspection staffs, procedures should be established for feedback of information to license reviewers.

Inspection Reports (Category II)

- Findings of inspections should be documented in a report describing the scope of inspections, substantiating all items of noncompliance and health and safety matters, describing the scope of licensees' programs, and indicating the substance of discussions with licensee's management and licensee's response.

- Reports should uniformly and adequately document the result of inspections including confirmatory measurements, status of previous noncompliance and identify areas of the licensee's program which should receive special attention at the next inspection. Reports should show the status of previous noncompliance and the results of confirmatory measurements made by the inspector.

Confirmatory Measurements (Category II)

- Confirmatory measurements should be sufficient in number and type to ensure the licensee's control of materials and to validate the licensee's measurements. In States which regulate the disposal of low-level radioactive waste in permanent disposal facilities, measurements should also be adequate to confirm non-radiological aspects of facility operations such as soils and materials testing and environmental sampling and analysis to demonstrate compliance with 10 CFR Part 61 and assure facility performance.

- RCP instrumentation should be adequate for surveying license operations (e.g., survey meters, air samples, lab counting equipment for smears, identification of isotopes, etc).

- RCP instrumentation should include the following types: GM Survey Meter, 0-50 mr/hr; Ion Chamber Survey Meter, several r/hr; micro-R-Survey meter; Neutron Survey Meter, Fast and Thermal; Alpha Survey Meter, 0-1,000,000 c/m; Air Samplers, Hi and Lo

Volume; Lab Counters, Detect 0.001 μ C/wipe; Velometers; Smoke Tubes; and Lapel Air samplers.

- Instrument calibration services or facilities should be readily available and appropriate for instrumentation used. Licensee equipment and facilities should not be used unless under a service contract. Exceptions for other State Agencies, e.g., a State University, may be made.

- Agency instruments used for surveys and confirmatory measurements should be calibrated within the same time interval as required of the licensee being inspected.

Dated at Rockville, MD, this 19th day of March 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-6684 Filed 3-22-90; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Information Conference; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensee and the public insight into our approach to safety regulations and to receive feedback from those in attendance on their concerns about our overall approach and, the potential impact of our policies on their operations, as well as feedback on differences that may exist on technical issues. NRC staff will provide information on ongoing programs and potential new initiatives as basis for discussion. Attention will be focused on differences in point of view on issues in an effort to understand the divergent views and to communicate ideas that may possibly provide resolutions to issues to be pursued after the meeting.

Discussions will proceed from general (i.e., the plenary sessions) to specific (i.e., the breakout sessions), with emphasis on operations and the NRC views based on experience in carrying out the NRC regulatory mission. NUMARC is acting as coordinator of industry's participation in the conference. Four plenary sessions are planned, each of which will be followed by four breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: The conference will be held May 1 and 2, 1990.

ADDRESSES: The conference will be held at The Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC. 20036 Telephone (202) 347-3000.

FOR FURTHER INFORMATION CONTACT: S. Singh Bajwa, Office of Nuclear Reactor Regulation U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone (301) 492-1109.

SUPPLEMENTARY INFORMATION:

Registration: There is a registration fee of \$200.00. Questions regarding registration should be directed to Science Applications International Corporation, 1710 Goodridge Drive, Mail Stop Tower 2-5-1 McLean, Virginia 22102, ATTN: Ms. Susan B. Chason Telephone (703) 448-6362

Participation: This conference is open to the general public; however, advance registration is required.

The following is the preliminary program for the conference:

Tuesday, May 1: 9 a.m.-5 p.m.

1. Introductory and Opening Remarks
2. Future Regulatory Trends
Morning Plenary Sessions
 - a. Regulatory Impact Survey
 - b. Regulatory Trends
 Morning Round Table Breakout Sessions
 - (1) Commercial Grade Procurement
 - (2) Operator Licensing
 - (3) Backfitting
 - (4) Inter-system LOCA
3. Luncheon Speaker: Commissioner Kenneth C. Rogers.
4. Operational Safety Experience
Afternoon Plenary Sessions
 - a. Recent Operating Experience
 - b. Engineering Support for Plant Operations
 Afternoon Round Table Breakout Sessions
 - (1) Maintenance Experience & Trends
 - (2) Systematic Assessment of Licensee Performance
 - (3) Design Basis Reconstitution
 - (4) Accident Management
5. Dinner Speaker: Commissioner James R. Curtiss.
7 p.m.-9 p.m.

Wednesday, May 2: 9 a.m.-5 p.m.

1. Severe Accident Closure
Morning Plenary Sessions
 - a. IPE Reviews
 - b. Severe Accident Research
 Morning Round Table Breakout Sessions
 - (1) Inservice Inspection/Testing
 - (2) Technical Specification Improvement Program
 - (3) Inspection Program
 - (4) IPE External Events
2. Luncheon Speaker: Chairman Kenneth M. Carr.
3. Future Plant Licensing
Afternoon Plenary Sessions
 - a. License renewal
 - b. Advanced LWR Certification

Afternoon Round Table Breakout Session

- (1) Emergency Response Data System
 - (2) Decommissioning
 - (3) License Renewal
 - (4) Station Blackout
4. Closing Panel: 4:30 p.m.-5 p.m.

Note: There will be a question and answer period after each session.

Dated in Rockville, Maryland, this 19th day of March 1990.

For the Nuclear Regulatory Commission.

John T. Larkins,

Chief, Planning, Program and Management Support Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 90-6683 Filed 3-22-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Houston Lighting & Power Co., et. al. (South Texas Project, Unit 1); Exemption

I

The Houston Lighting & Power Company, et. al. (the licensee) is the holder of Facility Operating License No. NPF-76, which authorizes operation of the South Texas Project, Unit 1 (STP-1) at a steady-state power level not in excess of 3800 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Matagorda County, Texas. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 111.D.3 of Appendix J to 10 CFR part 50, states that "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years."

III

By letter dated January 30, 1990, the licensee requested a one-time exemption from the requirements of section III.D.3 of Appendix J, as these requirements apply to conducting Type C tests on containment isolation valves each refueling outage. The acceptability of the one-time exemption request is addressed below.

IV

The licensee's request for a one-time exemption from the requirements of Appendix J to 10 CFR part 50 section III.D.3 is based on the brief time interval (six months) between completion of the STP-1 first refueling outage in October 1989 and the second refueling outage

schedule for April 1990. Because of this short time between the first and second refueling outages, and the demonstration of containment leakage integrity provided by the recent successful Type C tests, the licensee states that appropriate special circumstances as specified in 10 CFR 50.12 exists for relief from the burden of performing Type C tests at the second refueling outage.

The purpose of the rule regarding the Type C testing is to ensure that leakage through containment does not exceed allowable limits by testing at intervals not to exceed two years. Testing at intervals of up to two years for Type C tests is consistent with the intent of the rule. The success of the recent tests at South Texas and the fact that an exemption would allow the tests to be conducted at the end of 18 months (which is within the two year interval specified in the regulation) is an acceptable basis for deferring the Type C tests from the second to the third refueling outage. Thus, the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of Appendix J to 10 CFR part 50.

V

Based on the above, we conclude that granting a one-time exemption from the 10 CFR Appendix J, section III.D.3, Type C test frequency will not adversely affect containment integrity. Therefore, the licensee's request is granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the one-time exemption requested by the licensee's letter dated January 30, 1990, as discussed above, (1) is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest and (2) pursuant to 50.12(a)(2)(ii), special circumstances are present for this one-time exemption in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of appendix J to 10 CFR part 50.

The requested one-time exemption from the requirements of 10 CFR part 50, appendix J, section III.D.3 involving the containment leak rate type C test frequency is hereby granted.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (March 14, 1990, 55 FR 9518).

Dated at Rockville, Maryland, this 14th day of March 1990.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulations.

[FR Doc. 90-6685 Filed 3-22-90; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and the recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the *Federal Register*. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Office: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Size Status Declaration.

Form No.: SBA Form 480.

Frequency: On occasion.

Description of respondents: Small Business requesting size status determination.

Annual Responses: 4,200.

Annual Burden Hours: 700.

Title: Statement of Personal History.

Form No.: SBA Form 912.

Frequency: On occasion.

Description of Respondents: Applicants for Assistance or Temporary Employment in Disaster Offices.

Annual Responses: 91,500.

Annual Burden Hours: 7,625.

Title: Development Center Reporting Requirement.

Form No.: n/a.

Frequency: On occasion.

Description of respondents: Small Business Development Companies.

Annual Responses: 2,496.

Annual Burden Hours: 3,257.

William Cline,

Chief, Administrative, Information Branch.

[FR Doc. 90-6634 Filed 3-22-90; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council, District of Columbia; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Washington, DC., will hold a public meeting at 10 a.m. on Monday, April 2, 1990, at 1441 L Street, NW., 2nd Floor Conference Room, Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald A. Stadler, District Director, U.S. Small Business Administration, P.O. Box 19993, Washington, DC 20036-(202) 634-1500, extension 205.

Dated: March 14, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-6635 Filed 3-22-90; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council, Hawaii; Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m. on Thursday, April 19, 1990, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii, in the Cafeteria Room, 5th Floor, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2213, Honolulu, Hawaii 96850-806/541-2990.

Dated: March 14, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-6636 Filed 3-22-90; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Kentucky; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, will hold a public meeting from 9:30 a.m. to 2:30 p.m. on Wednesday April 18, 1990, at The Innovation Center, Bowling Green, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William Federhofer, District Director, U.S. Small Business Administration, room 188, 600 Dr. Martin L. King, Jr. Place, Louisville, Kentucky 40202-2254-502/582-5971.

Dated: March 14, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-6637 Filed 3-22-90; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council, Montana; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, will hold a public meeting at 9:30 a.m. on Friday, April 20, 1990, at the Federal Office Building, 301 South Park, Room 289, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626-0054-406/449-5381.

Dated: March 14, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-6638 Filed 3-22-90; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council, Rhode Island; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, will hold a public meeting at 9 a.m. on Thursday, April 26, 1990, at the Credit Union League of Rhode Island, 70 Jefferson Boulevard, Warwick, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anthony McMahon, District Director, U.S. Small Business Administration, 380 Westminster Mall, Providence, Rhode Island, 02903-401/528-4580.

Dated: March 14, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-6639 Filed 3-22-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 90-007]

Omega Validation of the South Pacific

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: Notice is hereby given that the U.S. Coast Guard has completed a validation study of the Omega Radionavigation System coverage in the South Pacific. The study measures the Omega system performance and provides information about anomalies and signal interference patterns in the region.

DATES: The report is available after March 23, 1990.

ADDRESSES: The report of the study's findings is available from the National Technical Information Service, Springfield, Virginia 22161. The report is identified by Government Accession number AD-A215916. The address of the Coast Guard command responsible for the report and the Omega validation effort is: Commanding Officer, Omega Navigation System Center, 7323 Telegraph Road, Alexandria, Virginia 22310-3998.

FOR FURTHER INFORMATION CONTACT: Verbal inquiries may be made to Mr. Randolph J. Doubt, Signal Analysis and Control Division, Omega Navigation System Center; telephone (703) 866-3880, FTS 398-3880.

SUPPLEMENTARY INFORMATION: Omega validations are intensive studies of radionavigation propagation in specified geographical regions. Actual signal data are collected, analyzed and compared to the theoretical coverage model for a respective region. The result of the comparison provides information as to the signal coverage and accuracy of the Omega system in the region.

Findings: The study shows that the measured Omega System performance generally conforms to theoretical expectations and that the system provides continuous, all weather navigation coverage, with typical

position fixing accuracy of 2 to 4 nautical miles, 95% of the time. In addition, the study provides information about anomalies and signal interference patterns in the region.

Dated: March 19, 1990.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90-6628 Filed 3-22-90; 8:45 am]

BILLING CODE 491-014-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 222; Revision 2]

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: The Assistant Commissioner (Criminal Investigation) and anyone acting for him/her is delegated authority to approve the making of application for court orders to monitor pagers and facsimile transceivers. The Chief, Criminal Investigation Division (District Directors in streamlined districts), the Director, Office of Enforcement (Criminal Investigation), National Office and anyone acting for these persons is delegated authority to approve the monitoring of tone-only pagers. The text of the delegation order appears below.

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT:

Courtney Todd, CIP:T, Room 2425, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone: (202) 566-3942 (not a toll-free number).

Authority to Approve the Use of Pen Registers and to Monitor Communications

Pursuant to the Authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10 and 18 U.S.C. 2516, the authority to approve the use of pen registers; to authorize the application for issuance of a court order to monitor communications via display-pagers, facsimile transceivers and tone and voice pagers (non-aural portion of the communications); and to approve the monitoring of communications via tone-only pagers is delegated as follows:

1. The Assistant Commissioner (Criminal Investigation) and anyone acting for him/her is authorized to approve the use of pen registers in the investigations involving felony violations within the jurisdiction of Criminal Investigation, waging violations and for locating fugitives from justice charged with a violation who were the subject of an investigation by Criminal Investigation. Authorization by the Assistant Commissioner (Criminal Investigation) for the use of a pen

register is contingent upon the obtaining of a court order prior to installation of the pen register. This authority may not be redelegated.

2. The Assistant Commissioner (Criminal Investigation) and anyone acting for him/her is authorized to approve the application for issuance of a court order to monitor communications via display pagers, facsimile transceivers and tone and voice pagers (non-aural portion of the communications). This authority may not be redelegated.

3. The Chief, Criminal Investigation Division (District Directors in streamlined districts), the Director, Office of Enforcement (Criminal Investigation), National Office and anyone acting for these persons may authorize the monitoring of communications via tone-only pagers. This authority may not be redelegated.

4. Delegation Order No. 222, (Rev. 1), effective October 28, 1987, is superseded.

Dated: January 30, 1990.

Approved:

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90-6604 Filed 3-22-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 57

Friday, March 23, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, March 29, 1990 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes.
Notice of Proposed Rulemaking:
Computerized and General Election Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer,
Telephone: (202) 370-3155.
Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 90-6781 Filed 3-21-90; 11:24 am]

BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 20, 1990.

Amendment to Previously Announced Item

TIME AND DATE: 10:00 a.m., Wednesday, March 21, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Part Open/Part Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

1. *Utah Power & Light Company*, Docket No. WEST 89-181-R. (Issues include whether the judge erred in ruling that Utah Power violated 30 CFR 75.400.)

The Commission will consider and act upon the following in closed session:

2. *Greenwich Collieries, Division of Pennsylvania Mines Corporation*, Docket Nos. PENN 85-188-R, etc. (Issues include whether the judge erred in ruling that orders of withdrawal issued pursuant to section 104(d)(1) of the Mine Act were invalid.)

The Commissioners determined unanimously that this change was necessary and that no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION:

Jean Ellen (202) 653-5629/
(202) 706-9300 for TDD Relay 1-800-877-8339 for Toll Free.
Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90-6791 Filed 3-21-90; 12:50 pm]

BILLING CODE 6735-01-M

INTERSTATE COMMERCE COMMISSION

Open Special Conference

TIME AND DATE: 10:00 a.m., Friday, March 23, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS:

Short Notice of Open Special Conference

The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31505

Rio Grand Industries, Inc.—Purchase and related trackage rights—Soo Line Railroad Company between Kansas City, MO and Chicago, IL

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of Government and Public Affairs,
Telephone: (202) 275-7252.

Noreta R. McGee,

Secretary.

[FR Doc. 90-6785 Filed 3-21-90; 12:38 pm]

BILLING CODE 7035-01-M

RESOLUTION TRUST CORPORATION

Withdrawal of Agenda Item from Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "Discussion Agenda" of the open meeting of the Resolution Trust Corporation Board of Directors scheduled to be held at 2:30 p.m. on Tuesday, March 20, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC:

Memorandum re: RTC Early Assistance Policy

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Corporation, at (202) 898-7102.

Dated: March 19, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-6736 Filed 3-21-90; 9:02 am]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 55, No. 57

Friday, March 23, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-11

[FTR Amdt. 5]

RIN 3090-AD45

Federal Travel Regulations; Relocation Income Tax Allowance

Correction

In rule document 90-1060 beginning on page 1674 in the issue of Thursday, January 18, 1990, make the following correction:

On page 1675, in the table, in the fourth column, the rate for entry "45. Utah" should read "7.35".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amdt. 6]

Federal Travel Regulation; Maximum Per Diem Rates

Correction

In rule document 90-1061 beginning on page 1946 in the issue of Friday, January 19, 1990 make the following corrections:

1. On page 1948, in the table, in the fourth column, the M&IE rate for Chicago, Illinois should read "34".

Note: This correction was inaccurately published at 55 FR 5945, February 20, 1990 as item 1. in FTR Amendment 6.

2. On page 1952, in the parenthetical which follows "VIRGINIA", "see" was inadvertently capitalized.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-258L]

Prescription Drug Marketing Act of 1987; Lateral Setting Forth Agency Policies; Availability

Correction

In notice document 90-4894 beginning on page 7778 in the issue of Monday, March 5, 1990, make the following correction:

On page 7778, in the third column, under DATES, in the first and second lines, "April 4, 1990" should read "May 4, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-00-4212-13; AZA-24207]

Realty Action; Exchange of Public Land, Maricopa County, Arizona

Correction

In notice document 89-30340 appearing on page 67 in the issue of Tuesday, January 2, 1990, make the following corrections:

In the 2nd column, under Township 5 North, Range 1 West, the 4th and 5th lines should read "sec. 4, SW 1/4, SW 1/4 SW 1/4 SE 1/4, W 1/4 SE 1/4 SW 1/4 SE 1/4, E 1/2 SW 1/4 SE 1/4 SE 1/4," and the 18th line should read "sec. 22, N 1/2 N 1/2, SW 1/4 NW 1/4."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-017101]

Proposed Continuation of Withdrawal, Idaho

Correction

In notice document 90-3555 appearing on page 5516 in the issue of Thursday, February 15, 1990, make the following correction:

In the 2nd column, under BOISE MERIDIAN, the 25th line should read

"N.7° 52'43" W., 3,530.72 ft. to Station No. 1402;"

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-0528]

Proposed Continuation of Withdrawal; Idaho

Correction

In notice document 90-3556 beginning on page 5516 in the issue of Thursday, February 15, 1990, make the following correction:

On page 5517, in the first column, the fourth line under "Baumgartner Recreation Area" should read "SW 1/4 E 1/4; and SW 1/4 E 1/4 SE 1/4;"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-38]

Proposed Revision of Transition Area; Clovis NM

Correction

In proposed rule document 89-25451 beginning on page 43971 in the issue of Monday, October 30, 1989, make the following correction:

§ 71.181 [Corrected]

On page 43972, in the first column, in the last line, "75 miles" should read "7.5 miles".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE25

Exchange Rates for Foreign Currencies

Correction

In rule document 90-5111 beginning on page 8140 in the issue of Wednesday,

March 7, 1990, make the following correction:

§ 3.32 [Corrected]

On page 8140, in the third column, in § 3.32 introductory text, in the second line, "pension of" should read "pension or".

BILLING CODE 1505-01-D

1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It is divided into two main sections: the first section deals with the general situation and the second section deals with the progress of the work.

2. The second part of the report deals with the results of the work during the year. It is divided into two main sections: the first section deals with the results of the work in the field and the second section deals with the results of the work in the laboratory.

3. The third part of the report deals with the conclusions of the work during the year. It is divided into two main sections: the first section deals with the conclusions of the work in the field and the second section deals with the conclusions of the work in the laboratory.

4. The fourth part of the report deals with the recommendations of the work during the year. It is divided into two main sections: the first section deals with the recommendations of the work in the field and the second section deals with the recommendations of the work in the laboratory.

5. The fifth part of the report deals with the summary of the work during the year. It is divided into two main sections: the first section deals with the summary of the work in the field and the second section deals with the summary of the work in the laboratory.

Federal Register

Friday
March 23, 1990

Part II

Department of Defense

Department of the Army

32 CFR Part 518

Release of Information and Records
From Army Files; Final Rule

DEPARTMENT OF DEFENSE**Department of the Army****32 CFR Part 518****Release of Information and Records From Army Files****AGENCY:** Department of the Army, DOD.**ACTION:** Final rule.

SUMMARY: This rule revises 32 CFR part 518, chapter V, (7-1-88) (Army Regulation 340-17), Release of Information and Records From Army Files, dated 1 October 1982. This final rule also changes the current name of the program and Army Regulation number to: Army Regulation 25-55, The Army Freedom of Information Act Program. Army Regulation 25-55 implements provisions for access and release of information from all Army information systems (automated and manual) in support of the Information Resources Management Program. It is published to promote uniformity on the DoD Freedom of Information Program. This revision removes DD Form 2086 and DD Form 2086-1 from the printed regulation. This revision establishes an Internal Control Review Checklist for management of the program.

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Petrarca, HQDA (SAIS-PS), Washington, DC 20310-0107, Telephone: (202) 697-5796.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Army revises 32 CFR part 518 which is derived from Army Regulation 340-17 which implements within the Department of the Army the provisions of Department of Defense Directives 5400.7-R and 5400.7 series, Department of Defense Freedom of Information Act Program (32 CFR part 286) pertaining to action on requests for release of departmental records under the Freedom of Information Act (5 U.S.C. 552). This rule is being published by the Department of the Army for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 518.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than \$100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 518

Freedom of Information Act.

32 CFR part 518 is revised as follows:

PART 518—THE ARMY FREEDOM OF INFORMATION ACT PROGRAM**Subpart A—General Provisions****References****Sec.**

518.1 References.

518.2 References (Army).

Purpose and Applicability

518.3 Purpose.

518.4 Applicability.

DoD Public Information

518.5 Public information.

518.6 Control system.

518.7 [Reserved]

518.8 FOIA request.

518.9 Agency record.

518.10 DoD component.

518.11 Initial Denial Authority (IDA).

518.12 Appellate authority.

518.13 Administrative appeal.

518.14 Law enforcement investigation.

Policy

518.15 Compliance with the FOIA.

518.16 Openness with the public.

518.17 Avoidance of procedural obstacles.

518.18 Prompt action on requests.

518.19 Use of exemptions.

518.20 Public domain.

518.21 Creating a record.

518.22 Description of requested record.

518.23 Referrals.

518.24 Authentication.

518.25 Unified and Specified Commands.

518.26 Records management.

Subpart B—FOIA Reading Rooms**Requirements**

518.27 Reading room.

518.28 Material availability.

Indexes

518.29 (a)(2) materials.

518.30 Other materials.

Subpart C—Exemptions**General Provisions**

518.31 General.

518.32 Jeopardy of government interest.

Exemptions

518.33 FOIA exemptions.

Subpart D—For Official Use Only**General Provisions**

518.34 General.

518.35 Prior FOUO application.

518.36 Historical papers.

518.37 Time to mark records.

518.38 Distribution statement.

Markings

518.39 Location of markings.

Dissemination and Transmission

518.40 Release and transmission procedures.

518.41 Transporting FOUO information.

518.42 Electrically transmitted messages.

518.43 Telephone usage.

Safeguarding FOUO Information

518.44 During duty hours.

518.45 During nonduty hours.

Termination, Disposal and Unauthorized Disclosures

518.46 Termination.

518.47 Disposal.

518.48 Unauthorized disclosure.

Subpart E—Release and Processing Procedures**General Provisions**

518.49 Public information.

518.50 Requests from private parties.

518.51 Requests from government officials.

518.52 Privileged release to officials.

518.53 Required coordination.

Initial Determinations

518.54 Initial Denial Authority (IDA).

518.55 Reasons for Non-releasing a record.

518.56 Denial tests.

518.57 Reasonably segregable portions.

518.58 Response to requester.

518.59 Extension of time.

518.60 Misdirected requests.

518.61 Records of Non-U.S. Government source.

518.62 File of initial denials.

518.63 Special mail services.

518.64 Receipt accounts.

Appeals

518.65 General.

518.66 Time of receipt.

518.67 Time limits.

518.68 Delay in responding to an appeal.

518.69 Response to the requester.

518.70 Consultation.

Judicial Actions

518.71 General.

518.72 Jurisdiction.

518.73 Burden of proof.

518.74 Actions by the court.

518.75 Non-United States Government source information.

518.76 Litigation status sheet.

Subpart F—Fee Schedule**General Provisions**

- 518.77 Authorities.
- 518.78 Application.
- 518.79 Fee restrictions.
- 518.80 Fee waivers.
- 518.81 Fee assessment.
- 518.82 Aggregating requests.
- 518.83 Effect of the Debt Collection Act of 1982 (5 U.S.C. 365).
- 518.84 Computation of fees.

Collection of Fees and Fee Rates

- 518.85 Collection of fees.
- 518.86 Search time.
- 518.87 Duplication.
- 518.88 Review time.
- 518.89 Audiovisual documentary materials.
- 518.90 Other records.
- 518.91 Cost for special services.

Collection of Fees and Fee Rates for Technical Data

- 518.92 Fees for technical data.

Subpart G—Reports**Reports Control**

- 518.93 General.

Annual Report

- 518.94 Reporting time.
- 518.95 Annual report content.
- 518.96 Annual report format.
- 518.97 Annual report worksheet.

Subpart H—Education and Training

- 518.98 Responsibility.
- 518.99 Purpose.
- 518.100 Scope and principles.
- 518.101 Implementation.
- 518.102 Uniformity of legal interpretation.

Appendices**Appendix A to Part 518—Unified Commands—Processing Procedures for FOI Appeals****Appendix B to Part 518—Addressing FOIA Requests****Appendix C to Part 518—Litigation Status Sheet****Appendix D to Part 518—Other Reason Categories****Appendix E to Part 518—DoD Freedom of Information Act Program Components****Appendix F to Part 518—Internal Control Review Checklist (AR 25-55)**

Authority: 5 U.S.C. 551, 552, 552a, 5101-5108, 5110-5113, 5115, 5332-5334, 5341-5342, 5504-5509, 7154; 10 U.S.C. 130, 1102, 2320-2321, 2328, 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181-188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

Subpart A—General Provisions**References****§ 518.1 References.**

- (a) Title 5, United States Code, section 552.
- (b) DoD Directive 5400.7, "DoD Freedom of Information Act Program," May 13, 1988.

(c) Title 50, United States Code, section 402, "National Security Information Exemption."

(d) DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982.

(e) DoD 5400.11-R, "Department of Defense Privacy Program," August 1983, authorized by DoD Directive 5400.11, June 9, 1982.

(f) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Commands," November 1, 1988.

(g) Title 5, United States Code, section 551, "Administrative Procedures Act."

(h) DoD 5200.1-R, "DoD Information Security Program Regulation," January 1987, authorized by DoD Directive 5200.1, June 7, 1982.

(i) Title 35, United States Code, section 181-188, "Patent Secrecy."

(j) Title 42, United States Code, Section 2162, "Restricted Data and Formerly Restricted Data."

(k) Title 18, United States Code, section 98, "Communication Intelligence."

(l) Title 18, United States Code, section 3500, "The Jencks Act."

(m) DoD Directive 5230.24, "Distribution Statements on Technical Documents," March 18, 1987.

(n) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978.

(o) DoD Directive 7650.1, "General Accounting Office Access to Records," August 26, 1982.

(p) ACP-121 (United States Supplement 1).

(q) Title 44, United States Code, Chapter 33, "Disposal of Records."

(r) DoD Instruction 7230.7, "User Charges," January 29, 1985.

(s) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(t) DoD Directive 7750.5, "Management and Control of Information Requirements," August 7, 1986.

(u) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 1974.

(v) DoD 7220.9-M, "Department of Defense Accounting Manual," October 1983, authorized by DoD Instruction 7220.9, October 22, 1981.

(w) DoD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984.

(x) DoD Directive 5230.9, "Clearance of DoD Information for Public Release," April 2, 1982.

(y) DoD Directive 7650.2, "General Accounting Office Audits and Reports," July 19, 1985.

(z) Title 10, United States Code, section 2328, "Release of Technical Data."

(aa) Title 10, United States Code, section 130, "Authority to Withhold from Public Disclosure Certain Technical Data."

(bb) Title 10, United States Code, section 2320-2321, "Rights in Technical Data."

(cc) Title 10, United States Code, section 1102, "Confidentiality of Medical Quality Records: Qualified Immunity Participants."

(dd) DoD Federal Acquisition Regulation Supplement (DFARS), 48 CFR subpart 227.4, "Technical Data, Other Data, Computer Software and Copyrights," May 18, 1987.

(ee) Executive Order 12600, "Predisclosure Procedures for Confidential Commercial Information," June 23, 1987.

(ff) Title 31, United States Code, section 3717.

(gg) Title 5, United States Code, section 552a, as amended, "The Privacy Act of 1974."

(hh) DoD 5000.12-M, "DoD Manual for Standard Data Elements," October 1986, authorized by DoD Instruction 5000.12, April 27, 1965.

(ii) DoD Instruction 5400.10, "OSD Implementation of DoD Freedom of Information Act Program," August 20, 1981.

§ 518.2 References (Army).

(a) *Publications*. Publications are available in the Army FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale, see § 518.18.

Publications are also offered for sale to the general public through the National Technical Information Services, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(1) AR 1-20 (Legislative Liaison) (cited in §§ 518.40 and 518.42).

(2) AR 20-1 (Inspector General Activities and Procedures) (cited in §§ 518.4, 518.54 and Appendix B).

(3) AR 25-1 (The Army Information Resources Management Program) (cited in §§ 518.3 and 518.26).

(4) AR 25-9 (Army Data Management and Standards Program) (cited in § 518.94).

(5) AR 25-400-2 (The Modern Army Recordkeeping System (MARKS)) (cited in §§ 518.26, 518.47, 518.62, and Appendix B).

(6) AR 27-20 (Claims) (cited in §§ 518.4 and 518.47).

(7) AR 36-2 (Processing Internal and External Audit Reports and Follow-up on Findings and Recommendations) (cited in § 518.4).

(8) AR 40-66 (Medical Record and Quality Assurance Administration) (cited in § 518.14).

(9) AR 40-400 (Patient Administration) (cited in § 518.4).

(10) AR 105-31 (Record Communications) (cited in § 518.42).

(11) AR 195-2 (Criminal Investigation Activities) (cited in §§ 519-4 and 519.52).

(12) AR 340-21 (The Army Privacy Program) (cited in §§ 518.18, 518.33 and 518.52).

(13) AR 360-5 (Public Information) (cited in §§ 518.4 and 518.50).

(14) AR 380-5 (Department of the Army Information Security Program) (cited in §§ 518.4, 518.33, 518.49 and 518.52).

(15) AR 530-1 (Operations Security [OPSEC]) (cited in §§ 518.49 and 518.50).

(16) AR 600-85 (Alcohol and Drug Abuse Prevention and Control Program) (cited in §§ 518.4 and 518.50).

(b) *Related publications.* A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

(1) AR 5-3 (Installation Management and Organization).

(2) AR 10-series (Organization and Functions).

(3) AR 25-3 (Army Life Cycle Management of Information Systems).

(4) AR 27-10 (Military Justice).

(5) AR 27-40 (Litigation).

(6) AR 27-60 (Patents, Inventions, and Copyrights).

(7) AR 60-20 (Army and Air Force Exchange Service (AAFES) Operating Policies) (AFR 147-14).

(8) AR 70-31 (Standards for Technical Reporting).

(9) AR 190-45 (Military Police Law Enforcement Reporting).

(10) AR 380-10 (Department of the Army Policy for Disclosure of Information, Visits, and Accreditation of Foreign Nationals (U)).

(11) AR 381-45 (Investigative Records Repository (IRR)).

(12) AR 385-40 (Accident Reporting and Records).

(13) AR 640-10 (Individual Military Personnel Records).

(14) DA Pam 25-30 (Consolidated Index of Army Publications and Blank Forms).

(15) DA Pam 25-51 (The Army Privacy Program-Systems Notices and Exemption Rules).

(16) DA Pam 385-95 (Aircraft Accident Investigation and Reporting).

(17) DoD 4500.11-PH (Defense Privacy Board Advisory Opinions).

(18) Title 10, United States Code, section 128, "Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information".

(c) Prescribed forms.

(1) DA Form 4948-R (Freedom of Information Act (FOIA)/Operations Security) (OPSEC) Desktop Guide) (prescribed in §§ 518.50 and 518.49).

(2) DA Label 87 (For Official Use Only Cover Sheet) (prescribed in §§ 518.41 and 518.44).

(3) DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) (prescribed in § 518.81).

(4) DD Form 2086-1 (Record of Freedom of Information (FOI) Processing Cost for Technical Data) (prescribed in § 518.92(a)).

Purpose and Applicability

§ 518.3 Purpose.

The purpose of this Regulation is to provide policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act and DoD Directive 5400.7 (references (a) and (b)) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This Army regulation implements provisions for access and release of information from all Army information systems (automated and manual) in support of the Information Resources Management Program (AR 25-1).

§ 518.4 Applicability.

(a) This Regulation applies to the Office of the Secretary of Defense (OSD), which includes for the purpose of this Regulation the Joint Staff, Unified Commands, the Military Departments, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at Appendix G.

(b) The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Title 50, United States Code, section 402 (reference (c)).

(c) This AR applies to—

(1) Active Army.

(2) Army National Guard.

(3) U.S. Army Reserve.

(4) Organizations for which the Department of the Army (DA) is the Executive Agent.

(d) This regulation governs written FOIA requests from members of the public. It does not preclude release of personnel or other records to agencies or individuals in the Federal

Government for use in official work. Section 518.52(a) gives procedures for release of personnel information to Government agencies outside DOD.

(e) Soldiers and civilian employees of the Department of the Army may, as private citizens, request DA or other agencies' records under the FOIA. They must prepare requests at their own expense and on their own time. They may not use Government equipment, supplies, or postage to prepare personal FOIA requests. It is not necessary for soldiers or civilian employees to go through the chain of command to request information under the FOIA.

(f) Requests for DA records processed under the FOIA may be denied only in accordance with the FOIA (5 U.S.C. 552(b)), as implemented by this regulation. Guidance on the applicability of the FOIA is also found in the Federal Acquisition Regulation (FAR) and in the Federal Personnel Manual (FPM).

(g) Release of some records may also be affected by the programs that created them. They are discussed in the following regulations:

(1) AR 20-1 (Inspector General reports).

(2) AR 27-10 (military justice).

(3) AR 27-20 (claims reports).

(4) AR 27-60 (patents, inventions, and copyrights).

(5) AR 27-40 (litigation: release of information and appearance of witnesses).

(6) AR 36-2 (GAO audits).

(7) AR 40-66 and AR 40-400 (medical records).

(8) AR 70-31 (technical reports).

(9) AR 20-1, AR 385-40, and DA Pam 395-95 (aircraft accident investigations).

(10) AR 195-2 (criminal investigation activities).

(11) AR 190-45 (Military Police records and reports).

(12) AR 360-5 (Army public affairs: public information, general policies on release of information to the public).

(13) AR 380-10 (release of information on foreign nationals).

(14) AR 381-45 (U.S. Army Intelligence and Security Command investigation files).

(15) AR 385-40 (safety reports and records).

(16) AR 600-85 (alcohol and drug abuse records).

(17) AR 640-10 (military personnel records).

(18) AR 690 series, FPM Supplement 293-31; FPM chapters 293, 294, and 339 (civilian personnel records).

(19) AR 380-5 and DOD 5200.1-R (national security classified information).

(20) Federal Acquisition Regulation (FAR), DOD Federal Acquisition Regulation Supplement (DFARS), and the Army Federal Acquisition Regulation Supplement (AFARS) (procurement matters).

(21) AR 380-5, paragraph 7-101e (policies and procedures for allowing persons outside the Executive Branch to do unofficial historical research in classified Army records).

DoD Public Information

§ 518.5 Public information.

The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. (See § 518.32 for clarification.) In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request unless the requested records are in a system of records; such records in a system of records will not be released absent a written request under the FOIA, unless otherwise releasable under the Privacy Act. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

§ 518.6 Control system.

(a) A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified

in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act (reference (gg)), when the request is from the subject of the records requested (see § 518.18, and the records requested are in a system of records).

(b) A request under the Privacy Act of 1974 (5 U.S.C. 552a) for access to records should also be processed as a FOIA request. If any part of the requested material is to be denied, the substantive provisions of both the Privacy Act and the Freedom of Information Act must be considered. Any withholding of information from a system of records must be justified under an exemption in each act.

§ 518.7 [Reserved]

§ 518.8 FOIA request.

A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7 (reference (b)), this regulation, or DoD Component supplementing regulations or instructions. This regulation is the Department of the Army's supplementing regulation.

§ 518.9 Agency record.

(a) The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

(b) The following are not included within the definition of the word "record":

(1) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(3) Commercially exploitable resources and administrative tools by which records are created, stored, and retrieved, including but not limited to:

(i) Maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(ii) Computer software, if not created or used as primary sources of

information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software).

(4) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(5) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(6) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(7) Information stored within a computer for which there is no existing computer program or printout. Within the Department of the Army, information stored in a computer for which there is no existing software program to extract the information or a printout of the information.

(c) A record must exist and be controlled by the Department of Defense at the time of the request to be considered subject to this regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

§ 518.10 DoD component.

An element of the Department of Defense, as defined in § 518.4, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel. The Department of the Army is a DoD Component.

§ 518.11 Initial denial authority (IDA).

An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. The Department of the Army's Initial Denial Authorities are designated in § 518.54(d).

§ 518.12 Appellate authority.

The Head of the DoD Component or the Component head's designee having jurisdiction of this purpose over the record. The Department of the Army's

appellate authority is the Office of General Counsel.

§ 518.13 Administrative appeal.

A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

§ 518.14 Law enforcement investigation.

An investigation conducted by a command or agency for law enforcement purposes relating to crime, waste, or fraud or for national security reasons. Such investigations may include gathering evidence for criminal prosecutions and for civil or regulatory proceedings.

Policy

§ 518.15 Compliance with the FOIA.

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

§ 518.16 Openness with the public.

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(a) *Operations Security (OPSEC)*. DA officials who release records under the FOIA must also consider OPSEC. The Army implementing directive is AR 530-1. Section 518.49 of this publication gives the procedure for FOIA personnel and the IDA to follow when a FOIA request appears to involve OPSEC.

(b) *DA Form 4948-R*. This form lists references and information frequently used for FOIA requests related to OPSEC. Persons who routinely deal with the public (by telephone or letter) on such requests should keep the form on their desks as a guide. DA Form 4948-R (Freedom of Information Act (FOIA)/Operations Security (OPSEC) Desk Top Guide) will be locally reproduced on 8½ x 11-inch paper. A copy for reproduction purposes is located at the back of this regulation. The name and telephone number of the command FOIA/OPSEC adviser will be entered on the form.

§ 518.17 Avoidance of procedural obstacles.

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this regulation and any supplemental regulations published by the DoD Components.

§ 518.18 Prompt action on requests.

When a member of the public complies with the procedures established in this regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When a Component has a significant number of requests, e.g., 10 or more, the requests will be processed in order of receipt. However, this does not preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. Requests by individuals for access to records about themselves are processed under the provisions of the respective Act cited in the request (except as prescribed in § 518.6(a)). Requests that cite both Acts or neither Act are processed under both Acts, using the fee provisions of the Federal Privacy Act and the time limits of the FOIA. If access is controlled by another Federal statute, follow the provisions of the controlling statute and § 518.33(c), Number 3 of this regulation. For further details, see DoD 5400.11-R (reference (e)). Even though a request that invokes the FOIA is administratively processed under the Privacy Act (reference (gg)) procedures, no record shall be withheld that would be released under FOIA procedures.

(a) The 10-day period prescribed for review of initial requests under the FOIA (5 U.S.C. 552(a)(6)) starts only when the request—

- (1) Is in writing.
- (2) Reasonably describes the record requested.
- (3) Does not fall in a category described in § 518.24, which requires an authentication seal.
- (4) Is received by the proper official designated to answer the request (see Appendix B).
- (5) Meets the procedural requirements of this regulation. (See § 518.61(b)(9)).

(b) All requests should refer explicitly or implicitly to the Freedom of Information Act, to ensure their prompt recognition as FOIA actions. Both the letter of request and the envelope in which it is sent should be clearly

marked "FREEDOM OF INFORMATION ACT REQUEST."

(c) Members of the public who make FOIA requests should carefully follow the guidance in this regulation. They should send requests to the office that has the desired record or to a specific agency FOIA official for referral. The Army Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, ATTN: ASQNS-OP-F, Room 1146, Hoffman Building I, Alexandria, VA 22331-0301 can supply correct addresses.

(d) See AR 340-21 for Privacy Act procedures.

§ 518.19 Use of exemptions.

(a) Records that may be withheld under the exemptions outlined in subpart C of this regulation shall be made available to the public when it is determined that no governmental interest will be jeopardized by their release. Determination of jeopardy to governmental interest is within the sole discretion of the Component (IDA), consistent with statutory requirements, security classification requirements, or other requirements of law.

(b) Parts of a requested record may be exempt from disclosure under the FOIA. The proper DA official may delete exempt information and release the remainder to the requester. The proper official also has the discretion under the FOIA to release exempt information; he or she must exercise this discretion in a reasonable manner, within regulations.

§ 518.20 Public domain.

Nonexempt records released under the authority of this Regulation are considered to be in the public domain. Nonexempt records maintained in a DoD Component's Public Reading Room, or which can be made available in the Public Reading Room within a short time frame (15 minutes or less) are considered to be in the public domain. Exempt records released pursuant to this Regulation or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if

the same individual seeks the records in a private or personal capacity.

§ 518.21 Creating a record.

A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this regulation. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create nor compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessment for direct search, review (in the case of commercial requesters), and duplication associated with the request shall be in accordance with § 518.78. Requested records, or portions thereof, may be located at several Army offices. The official receiving the FOIA request will refer it to those other offices for direct reply if—

(a) The information must be reviewed for release under the FOIA; and

(b) Assembling the information would interfere materially with DA operations at the site first receiving the request.

§ 518.22 Description of requested record.

(a) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below in § 518.61(b). Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act. DA officials will reply to

unclear requests by letter. The letter will—

(1) Describe the defects in the request.

(2) Explain the types of information in paragraph (b) of this section, and ask the requester for such information.

(3) Explain that no action will be taken on the request until the requester replies to the letter.

(b) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(1) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(2) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(c) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(d) The following guidelines deal with requests for personal records.

Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(e) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel with reasonable effort, the description is adequate.

§ 518.23 Referrals.

(a) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in

itself be classified, that Component will consult the DoD Component having cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. Within the Army, referrals will be made directly to offices that may have custody of requested records. If the office receiving the FOIA request does not know where the requested records are located, the request and an explanatory cover letter will be forwarded to The Army Freedom of Information and Privacy Act Division, Information Systems Command, Pentagon, ATTN: ASQNS-OP-F, Room 1146, Hoffman Building I, Alexandria, VA 22331-0301.

(b) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a Government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(c) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the Department of Defense, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(d) A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of

the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(e) Within the Department of Defense, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to the Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(f) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(g) Agencies outside the Department of Defense that are subject to the FOIA:

(1) A Component may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Component must respond to the request.

(2) A DoD Component shall not honor any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(3) Notwithstanding anything to the contrary in § 518.23, a Component shall notify requesters seeking National Security Council (NSC) or White House documents that they should write directly to the NSC or White House for such documents. DoD documents in which the NSC or White House has a concurrent reviewing interest shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD (PA)), ATTN: Directorate For Freedom of Information and Security Review (DFOISR), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. NSC or White House documents discovered in Components' files which are responsive to the FOIA request shall be forwarded to OASD

(PA), ATTN: DFOISR, for subsequent coordination with the NSC or White House, and returned to the Component with a release determination.

(h) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(i) On occasion, the Department of Defense receives FOIA requests for Government Accounting Office (GAO) documents containing DoD information, either directly from requesters, or as referrals from the GAO. The GAO is outside the Executive Branch, and as such, all FOIA requests for GAO documents containing DoD information will be processed under the provisions of Security Review or Mandatory Declassification Review (MDR) Directives (references h and x). Requests received in DoD for unclassified GAO reports containing DoD information shall be transferred to the GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877-1450. Requests received in the Department of Defense for classified GAO documents (or documents unidentifiable as to classification) shall be referred to the GAO, Office of Security and Safety, Washington, DC 20548-0001. After internal review, the GAO shall refer the request and documents to Office of the Inspector General, Department of Defense (OIG, DoD), and that Component shall refer the action to the OASD (PA), ATTN: DFOISR, for processing under Security Review or MDR provisions. (See reference (y)). In DA, requests received for GAO documents that contain classified Army information will be handled by the Army Inspector General's Office.

§ 518.24 Authentication.

Records provided under this regulation shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of \$5.20 for each authentication.

§ 518.25 Unified and Specified Commands.

(a) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (f)); it authorizes and requires the Unified Commands to

process Freedom of Information (FOI) requests in accordance with DoD Directive 5400.7 (reference (b)) and this regulation. The Unified Commands shall forward directly to the OASD (PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A. For Army components of unified commands, if the requested records are joint documents, process the FOIA request through unified command channels. If the requested documents are Army-unique, process the FOIA request through Army channels.

(b) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

§ 518.26 Records management.

FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules. See AR 25-400-2. AR 25-1 contains Army policy for records management requirements in the life cycle management of information. Information access and release, to include potential electronic access by the public, will be considered during information systems design.

Supart B—FOIA Reading Rooms Requirements

§ 518.27 Reading room.

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of subpart F. The Army FOIA Reading Room is operated by The Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon. It is located in Room 1146, Hoffman Building I, 2461 Eisenhower Avenue, Alexandria, VA 22331-0301. It is open from 0800 to 1530, Monday through Friday, except holidays.

§ 518.28 Material availability.

The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOIA reading room for inspection and copying, unless such materials are published and copies are

offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the *Federal Register* a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (g)), that may be cited, used, or relied upon as precedents in future adjudications.

(b) Statements of policy and interpretations that have been adopted by the agency and are not published in the *Federal Register*.

(c) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

Indexes

§ 518.29 "(a)(2)" Materials.

(a) Each DoD Component shall maintain in each facility prescribed in § 518.27, an index of materials described in § 518.4, that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued,

promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this regulation.

(b) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it published in the *Federal Register* an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Subpart F.

(c) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

§ 518.30 Other materials.

(a) Any available index of DoD Component material published in the *Federal Register*, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms. Army "(a)(2)" materials are published in DA Pam 25-30.

(b) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

General Provisions

§ 518.31 General.

Records that meet the exemption criteria in the exemption part of subpart C may be withheld from public disclosure and need not be published in the *Federal Register*, made available in a library reading room, or provided in response to an FOIA request.

§ 518.32 Jeopardy of Government Interest.

An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this publication, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found § 518.33(d), Number 4 and § 518.61.

Exemptions

§ 518.33 FOIA Exemptions.

The following types of records may be withheld by the IDA in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law.

(a) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1-R (reference (h)). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1-R, section 2-204f., apply. The procedures in AR 380-5 apply to Army activities. Also, when the confirmation or denial of the existence of responsive records to a FOIA request may, in and of itself, reveal exempt information, an agency may respond to the request by refusing to confirm or deny whether such records exist. Such a response should be used only when clearly warranted.

(b) *Number 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

(1) Those operating rules, guidelines, and manuals for DoD (Army)

investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component (Army) to fulfill a legal requirement.

(2) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(3) Lists of DoD personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public (see also § 518.33(f)(3)).

(4) Negotiation and bargaining techniques, practices, and limitations.

(c) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(1) National Security Agency Information Exemption, 50 U.S.C. section 6 (reference (c)).

(2) Patent Secrecy, 35 U.S.C. 181-188 (reference (i)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (j)).

(4) Communication Intelligence, 18 U.S.C. 798 (reference (k)).

(5) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25 (references (w) and (aa)).

(6) Confidentiality of Medical Quality Records: Qualified Immunity.

(7) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(d) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the

source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320-2321 and DoD Federal Acquisition Regulation Supplement (DFARS), 48 CFR subpart 227.4 (references (bb) and (dd)). Technical data developed exclusively with Federal funds may be withheld under exemption (c) Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (reference (w)) (see § 518.33(c)(5)).

(e) *Number 5.* (1) Except as provided in § 518.33(e)(1) (ii) through (v), internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether

within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a))) or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, State, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual

litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interest of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion or preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request, but only to the extent that the

purpose of the request assists in determining whether the information requested would shed light on the agency's performance of the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DoD personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists (see also § 518.33(b)(3)). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(3) Individual's personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (reference (d)). The Army implementing directive is AR 340-21.

(4) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(5) Requests for access to or release of records, before appellate review, of courts-martial or special courts-martial involving a bad conduct discharge should be addressed as in Appendix B, paragraph 5. This guidance does not preclude furnishing records of a trial to an accused.

(g) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption also applies to law enforcement investigations such as Inspector General investigations.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(i) Could reasonably be expected to interfere with enforcement proceedings.

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(A) When the confirmation of the existence of responsive records to a FOIA request could, in and of itself, reveal personally private information,

an agency may respond to the request by refusing to confirm or deny whether such records exist. However, such a response, if used at all, must be used consistently, not only when records actually exist that need to be withheld, but also when responding to a request for records that do not exist. Otherwise, a "no records" response when records do not exist and a "refusal to confirm or deny" when records do exist will only confirm to the requester that the records do exist.

(B) A response that refuses to confirm or deny the existence of records that do exist is justified only when there is a cognizable privacy interest at stake and there is insufficient public interest in disclosure to outweigh it. Refusal to confirm or deny should not be used when

(1) The person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights;

(2) The person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact; or

(3) The Government has already officially confirmed that the person was or is the subject of a law enforcement investigation.

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(v) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense (Army) when no indictment has been obtained nor

any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference (l)) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (reference (d)). The Army implementing directive is AR 340-21.

(5) Exclusions. Excluded from the above exemption are the following two situations applicable to the Department of Defense:

(i) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstances continues, treat the records or information as not subject to exemption 7 (the FOIA). In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to exemption 7 (the FOIA), unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7 (the FOIA), the response to the requester will state that no records were found.

(h) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency

responsible for the regulation or supervision of financial institutions.

(i) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

General Provisions

§ 518.34 General.

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

§ 518.35 Prior FOUO application.

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

§ 518.36 Historical papers.

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

§ 518.37 Time to mark records.

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

§ 518.38 Distribution statement.

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 (reference (m)) shall bear that statement and shall not be marked FOUO.

Markings

§ 518.39 Location of markings.

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" in bold letters at least $\frac{3}{16}$ of an inch high at the bottom on the outside of the front cover (if any), on the first page, and on the outside of the back cover (if any).

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(c) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page. The paragraph(s) containing the "For Official Use Only" information should also be marked with the initials FOUO.

(d) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein. Markings on microfilm will conform to the requirements of paragraphs (b) and (c) of this section. As a minimum, each frame of a microform containing FOUO information will be marked "FOR OFFICIAL USE ONLY" at the bottom center of the appropriate page or frame. Classified or protective markings placed by a software program at both top and bottom of a page or frame of a computer-generated report are acceptable. Storage media (disk packs or magnetic tapes) containing personal information subject to the Privacy Act will be labeled "FOR OFFICIAL USE ONLY-Privacy Act Information."

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer: "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions _____ apply."

(f) Permanently bound volumes need to be marked only on the outside of the front and back covers, title page, and first and last pages. Volumes stapled by office-type hand or electric staples are not considered permanently bound.

Dissemination and Transmission**§ 518.40 Release and transmission procedures.**

Until FOUO status is terminated, the release and transmission instructions that follow apply:

(a) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(b) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only," and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(c) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (n)). Army implementing instructions are in section 518.52 and in AR 1-20. Release to the GAO is governed by DoD Directive 7650.1 (reference (o)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

§ 518.41 Transporting FOUO information.

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail. When material marked FOUO is removed from storage, attach DA Label 87 (For Official Use Only Cover Sheet).

§ 518.42 Electrically transmitted messages.

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP[EN]121 (US Supp 1) (reference (p)) for FOUO information. Army follows the procedures in AR 105-31.

§ 518.43 Telephone usage.

FOUO information may be discussed over the telephone lines with DoD and other Government agencies for official purposes.

Safeguarding FOUO Information**§ 518.44 During duty hours.**

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel. When material marked FOUO is removed from storage, attach DA Label 87.

§ 518.45 During nonduty hours.

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Public Law 86-36 (reference (c)) shall meet the safeguards outlined for that group of records. Army personnel handling National Security Agency (NSA) records will follow NSA instructions on storing and safeguarding those records.

Termination, Disposal and Unauthorized Disclosures**§ 518.46 Termination.**

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent

practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

§ 518.47 Disposal.

(a) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(b) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33 (reference (q)), as implemented by DoD Component instructions concerning records disposal. Army implementing disposition instructions are in AR 5-400-2.

§ 518.48 Unauthorized disclosure.

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act (reference (gg)) may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures**General Provisions****§ 518.49 Public information.**

(a) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD or Department of the Army record made under the FOIA may be denied only when:

(1) The record is subject to one or more of the exemptions in subpart 3, and the Government's interest will be jeopardized by its release.

(2) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(3) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(b) Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in Appendix B.

(c) Release of information under the FOIA can have an adverse impact on OPSEC. The Army implementing directive for OPSEC is AR 530-1. It requires that OPSEC points of contact be named for all HQDA staff agencies and for all commands down to battalion level. The FOIA official for the staff agency or command will use DA Form 4948 (ENJR) to announce the OPSEC/FOIA advisor for the command. Persons named as OPSEC points of contact will be OPSEC/FOIA advisors. Command OPSEC/FOIA advisors should implement the policies and procedures in AR 530-1, consistent with this regulation and with the following considerations:

(1) Documents or parts of documents properly classified in the interest of national security must be protected. Classified documents may be released in response to a FOIA request only under AR 380-5, chapter III. AR 380-5 provides that if parts of a document are not classified and can be segregated with reasonable ease, they may be released, but parts requiring continued protection must be clearly identified.

(2) The release of unclassified documents could violate national security. When this appears possible, OPSEC/FOIA advisors should request a classification evaluation of the document by its proponent under AR 380-5, paragraphs 2-204, 2-600, 2-800, and 2-801. In such cases, other FOIA exemptions (paragraph 3-200) may also apply.

(3) A combination of unclassified documents, or parts of them, could combine to supply information that might violate national security if released. When this appears possible, OPSEC/FOIA advisors should consider classifying the combined information per AR 380-5, paragraph 2-211.

(4) A document or information may not be properly or currently classified when a FOIA request for it is received.

In this case, the request may not be denied on the grounds that the document or information is classified except in accordance with Executive Order 12356, section 1.6(d), and AR 380-5, paragraph 2-204, and with approval of the Army General Counsel.

(d) OPSEC/FOIA advisors will—

(1) Advise persons processing FOIA requests on related OPSEC requirements.

(2) Help custodians of requested documents prepare requests for classification evaluations.

(3) Help custodians of requested documents identify the parts of documents that must remain classified under this paragraph and AR 380-5.

(e) OPSEC/FOIA advisors do not, by their actions, relieve FOIA personnel and custodians processing FOIA requests of their responsibility to protect classified or exempted information.

§ 518.50 Requests from private parties.

The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking information. Requests from private persons will be made in writing, and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter- and intra-agency coordination. Components are under no obligation to establish procedures to receive and deliver requests. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in § 518.20. DA officials will release the following records, upon request, to the persons specified below, even though these records are exempt from release to the general public. The 10-day limit (§ 518.18) applies.

(a) *Medical records.* Commanders or chiefs of medical treatment facilities will release information.

(1) On the condition of sick or injured patients to the patient's relatives.

(2) That a patient's condition has become critical to the nearest known relative or to the person the patient has named to be informed in an emergency.

(3) That a diagnosis of psychosis has been made to the nearest known relative or to the person named by the patient.

(4) On births, deaths, and cases of communicable diseases to local officials (if required by local laws).

(5) Copies of records of present or former soldiers, dependents, civilian employees, or patients in DA medical facilities will be released to the patient or to the patient's representative on written request. The attending physician can withhold records if he or she thinks that release may injure the patient's mental or physical health; in that case, copies of records will be released to the patient's next of kin or legal representative or to the doctor assuming the patient's treatment. If the patient is adjudged insane, or is dead, the copies will be released, on written request, to the patient's next of kin or legal representative.

(6) Copies of records may be given to a Federal or State hospital or penal institution if the person concerned is an inmate or patient there.

(7) Copies of records or information from them may be given to authorized representatives of certain agencies. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible to receive such information when they are engaged in cooperative studies, with the approval of the Surgeon General of the Army. However, certain information on drug and alcohol use cannot be released. AR 600-85 covers the Army's alcohol and drug abuse prevention and control program.

(8) Copies of pertinent parts of a patient's records can be furnished to the staff judge advocate or legal officer of the command in connection with the Government's collection of a claim. If proper, the legal officer can release this information to the tortfeasor's insurer without the patient's consent.

Note: Information released to third parties under paragraphs (a) (5), (6), and (7) of this section must be accompanied by a statement of the conditions of release. The statement will specify that the information not be disclosed to other persons except as privileged communication between doctor and patient.

(b) Military personnel records.

Military personnel records will be released under these conditions:

(1) DA must provide specific information about a person's military service (statement of military service) in response to a request by that person or with that person's written consent to his or her legal representative.

(2) Papers relating to applications for, designation of beneficiaries under, and allotments to pay premiums for, National Service Life Insurance or Serviceman's Group Life Insurance will be released to the applicant or to the insured. If the insured is adjudged insane (evidence of an insanity

judgment must be included) or dies, the records will be released, on request, to designated beneficiaries or to the next of kin.

(3) Copies of DA documents that record the death of a soldier, a dependent, or a civilian employee will be released, on request, to that person's next of kin, life insurance carrier, and legal representative. A person acting on behalf of someone else concerned with the death (e.g., the executor of a will) may also obtain copies by submitting a written request that includes evidence of his or her representative capacity. That representative may give written consent for release to others.

(4) Papers relating to the pay and allowances or allotments of a present or former soldier will be released to the soldier of his or her authorized representative. If the soldier is deceased, these papers will be released to the next of kin or legal representatives.

(c) *Civilian personnel records.* Civilian Personnel Officers (CPOs) with custody of papers relating to the pay and allowances or allotments of current or former civilian employees will release them to the employee or his or her authorized representative. If the employee is dead, these records will be released to the next of kin or legal representative. However, a CPO cannot release statements of witnesses, medical records, or other reports or documents pertaining to compensation for injuries or death of a DA civilian employee (Federal Personnel Manual, chapter 294). Only officials listed in § 518.54(d)(18) can release such information.

(d) *Release of information to the public concerning accused persons before determination of the case.* Such release may prejudice the accused's opportunity for a fair and impartial determination of the case. The following procedures apply:

(1) Information that can be released. Subject to paragraph (d)(2) of this section, the following information concerning persons accused of an offense may be released by the convening authority to public news agencies or media.

(i) The accused's name, grade or rank, unit, regular assigned duties, and other information as allowed by AR 340-21, paragraph 3-3a.

(ii) The substance or text of the offense of which the person is accused.

(iii) The identity of the apprehending or investigating agency and the length or scope of the investigation before apprehension.

(iv) The factual circumstances immediately surrounding the

apprehension, including the time and place of apprehension, resistance, or pursuit.

(v) The type and place of custody, if any.

(2) Information that will not be released. Before evidence has been presented in open court, subjective observations or any information not incontrovertibly factual will not be released. Background information or information relating to the circumstances of an apprehension may be prejudicial to the best interests of the accused, and will not be released except under paragraph (d)(3)(iii) of this section, unless it serves a law enforcement function. The following kinds of information will not be released:

(i) Observations or comments on an accused's character and demeanor, including those at the time of apprehension and arrest or during pretrial custody.

(ii) Statements, admissions, confessions, or alibis attributable to an accused, or the fact of refusal or failure of the accused to make a statement.

(iii) Reference to confidential sources, investigative techniques and procedures, investigator notes, and activity files. This includes reference to fingerprint tests, polygraph examinations, blood tests, firearms identification tests, or similar laboratory tests or examinations.

(iv) Statements as to the identity, credibility, or testimony of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or not that evidence or argument may be used at the trial.

(vi) Any opinion on the accused's guilt.

(vii) Any opinion on the possibility of a plea of guilty to the offense charged, or of a plea to a lesser offense.

(3) Other considerations.

(i) Photographing or televising the accused. DA personnel should not encourage or volunteer assistance to news media in photographing or televising an accused or suspected person being held or transported in military custody. DA representatives should not make photographs of an accused or suspect available unless a law enforcement function is served. Requests from news media to take photographs during courts-martial are governed by AR 360-5.

(ii) Fugitives from justice. This paragraph does not restrict the release of information to enlist public aid in apprehending a fugitive from justice.

(iii) Exceptional cases. Permission to release information from military personnel records other than as outlined

in paragraph (b) of this section to public news agencies or media may be requested from The Judge Advocate General (TJAG). Requests for information from military personnel records other than as outlined in paragraph (b) of this section above will be processed according to this regulation.

(e) Litigation, tort claims, and contract disputes. Release of information or records under this paragraph is subject to the time limitations prescribed in § 518.58. The requester must be advised of the reasons for nonrelease or referral.

(1) Litigation. (i) Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, Office of the Judge Advocate General (OTJAG), of the substance of the request and the content of the record requested. (Mailing address: HQDA (DAJA-LT), WASH DC 20310-2210; telephone, AUTOVON 227-3462 or commercial (202) 697-3462.)

(ii) If information is released for use in litigation involving the United States, the official responsible for investigative reports (AR 27-40, paragraph 2-4) must be advised of the release. He or she will note the release in such investigative reports.

(iii) Information or records normally exempted from release (i.e., personnel and medical records) may be releasable to the judge or court concerned, for use in litigation to which the United States is not a party. Refer such requests to the local staff judge advocate or legal officer, who will coordinate it with the Litigation Division, OTJAG paragraph (a) of this section.

(2) Tort claims. (i) A claimant or a claimant's attorney may request a record that relates to a pending administrative tort claim filed against the DA. Refer such requests promptly to the claims approving or settlement authority that has monetary jurisdiction over the pending claim. These authorities will follow AR 27-20. The request may concern an incident in which the pending claim is not as large as a potential claim; in such a case, refer the request to the authority that has monetary jurisdiction over the potential claim.

(ii) A potential claimant or his or her attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, though none has yet been filed. Refer such requests to the staff judge advocate or legal officer of the command. That authority, when subordinate, will

promptly inform the Chief, U.S. Army Claims Service, of the substance of the request and the content of the record. (Mailing address: U.S. Army Claims Service, ATTN: JACS-TCC, Fort George G. Meade, MD 20755-5360; telephone, AUTOVON 923-7860 or commercial (301) 677-7860.)

(iii) DA officials listed in § 518.54(d) who receive requests under paragraphs (a) or (b) of this section will refer them directly to the Chief, U.S. Army Claims Service. They will also advise the requesters of the referral and the basis for it.

(iv) The Chief, U.S. Army Claims Service, will process requests according to this regulation and AR 27-20, paragraph 1-10.

(3) Contract disputes. Each request for a record that relates to a potential contract dispute or a dispute that has not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, the officials listed in §§ 518.50(a) and 518.54(d) will consider the effect of release on the potential dispute. Those officials may consult with the U.S. Army Legal Services Agency. (Mailing address: U.S. Army Legal Services Agency, ATTN: JALS-CA, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041-5013; telephone, AUTOVON 289-2023 or commercial (703) 756-2023.) If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals or to a final decision that is still subject to appeal (i.e., 90 days have not lapsed after receipt of the final decision by the contractor), then the request will be—

(i) Treated as involving a contract dispute; and

(ii) Referred to the U.S. Army Legal Services Agency. (For address and phone number, see paragraph(e)(3) of this section.)

(f) Dissemination of unclassified information concerning physical protection of special nuclear material.

(1) Unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material, is prohibited under 10 U.S.C. 128 and paragraph 3-200, exemption number 3.

(2) This prohibition shall be applied by the Deputy Chief of Staff for Operations and Plans as the IDA, to prohibit the dissemination of any such information only if and to the extent that it is determined that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health

and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) Illegal production of nuclear weapons; or

(ii) Theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making such a determination, DOD personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if the information proposed to be prohibited from dissemination were at no time available for dissemination.

(4) DOD personnel shall exercise the foregoing authority to prohibit the dissemination of any information described:

(i) So as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(ii) Upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(A) Illegal production of nuclear weapons; or

(B) Theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(5) DoD employees shall not use this authority to withhold information from the appropriate committees of Congress.

(g) Release of names and duty addresses.

(1) Requests for release of personnel lists containing names and duty addresses will be denied under Exemption 2 of the FOIA. Coordinate all such requests with the appropriate IDA.

(2) Telephone directories, organizational charts, and/or staff directories published by installations or activities in CONUS and U.S. Territories will be released when requested under FOIA. In all such directories or charts, names of personnel assigned to sensitive units, routinely deployable units, or units stationed in foreign territories will be redacted and denied under Exemption 6 of the FOIA. By DoD policy, the names of general officers (or civilian equivalent) or public affairs officers may be released at any time. The sanitized copy will be redacted by cutting out or masking the names and reproducing the document. The IDA is the U.S. Army Information Systems Command-Pentagon, Freedom of Information and Privacy Act Division, ATTN: ASQNS-OP-F, Room 1146, Hoffman Building I, Alexandria, VA. 22331-0301.

(3) Public Affairs Offices may release information determined to have legitimate news value, such as notices of personnel reassignments to new units or installations within the continental United States, results of selection/promotion boards, school graduations/completions, and awards and similar personal achievements. They may release the names and duty addresses of key officials, if such release is determined to be in the interests of advancing official community relations functions.

§ 518.51 Requests from government officials.

Requests from officials of Federal, state, or local Governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

§ 518.52 Privileged release to officials.

(a) Subject to the provisions of DoD Regulation 5200.1-R (reference (h)), and AR 380-5, applicable to classified information, DoD Directive 5400.11 (reference (d)), and AR 340-21, applicable to personal privacy, or other applicable law, records exempt from release under section C, Exemptions, may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, State or Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(1) To Congress, in accordance with DoD Directive 5400.4 (reference (n)). The Army implementing directive is AR 1-20. Commanders or chiefs will notify the Chief of Legislative Liaison of all releases of information to members of Congress or staffs of congressional committees. Organizations that in the normal course of business are required to provide information to Congress may be excepted. Handle requests by members of Congress (or staffs of congressional committees) for inspection of copies of official records as follows:

(i) National security classified records. Follow AR 380-5.

(ii) Civilian personnel records. Members of Congress may examine official personnel folders as permitted by 5 CFR 297.503(i).

(iii) Information related to disciplinary action. This subparagraph refers to records of trial by courts-martial; nonjudicial punishment of military

personnel under the Uniform Code of Military Justice, Article 15; nonpunitive measures such as administrative reprimands and admonitions; suspensions of civilian employees; and similar documents. If the Department of the Army has not issued specific instructions on the request, the following instructions will apply. Subordinate commanders will not release any information without securing the consent of the proper installation commander. The installation commander may release the information unless the request is for a classified or "For Official Use Only" document. In that case the commander will refer the request promptly to the Chief of Legislative Liaison (see paragraph (d)) of this section for action, including the recommendations of the transmitting agency and copies of the requested records with the referral.

(iv) Military personnel records. Only HQDA can release information from these records. Custodians will refer all requests from Congress directly and promptly to the Chief of Legislative Liaison, Department of the Army, HQDA (SALL) WASH DC 20310-1600.

(v) Criminal investigation records. Only the Commanding General, U.S. Army Criminal Investigation Command (USACIDC), can release any USACIDC-originated criminal investigation file. For further information, see AR 195-2.

(vi) Other exempt records. Commanders or chiefs will refer requests for all other categories of exempt information under § 518.33 directly to the Chief of Legislative Liaison per paragraph (d) of this section. They will include a copy of the material requested and, as appropriate, recommendations concerning release or denial.

(vii) All other records. The commander or chief with custody of the records will furnish all other information promptly.

(2) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(3) To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(i) Disciplinary actions and criminal investigations. Requests for access to, or information from, the records of disciplinary actions or criminal investigations will be honored if proper credentials are presented. Representatives of the Office of Personnel Management may be given information from personnel files of employees actually employed at organizations or activities. Each such

request will be considered on its merits. The information released will be the minimum required in connection with the investigation being conducted.

(ii) Other types of requests. All other official requests received by DA elements from agencies of the executive branch (including other military departments) will be honored, if there are no compelling reasons to the contrary. If there are reasons to withhold the records, the requests will be submitted for determination of the propriety of release to the appropriate addresses shown in Appendix B.

(4) To State and local officials, as determined by the head of a DoD Component or designee.

(b) DoD Components shall inform officials receiving records under the provisions of § 518.52(a), that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

§ 518.53 Required coordination.

Before forwarding a FOIA request to an IDA for action, records custodians will obtain an opinion from their servicing judge advocate concerning the releasability of the requested records. A copy of that legal review, the original FOIA request, two copies of the requested information (with one copy clearly indicating which portions are recommended for withholding, which FOIA exemptions support such withholding, and which portions, if any, have already been released), a copy of the interim response acknowledging receipt and notifying the requester of the referral to the IDA, and a cover letter containing a telephone point of contact will be forwarded to the IDA with the command's recommendation to deny a request in whole or in part.

Initial Determinations

§ 518.54 Initial Denial Authority (IDA).

(a) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. The DA officials in paragraph (d) of this section are designated as the Army's only IDAs. Only an IDA, his or her delegate, or the Secretary of the Army can deny FOIA requests for DA records. Each IDA will act on direct and referred requests for records within his or her area of functional responsibility. (See the proper AR in the 10-series for full discussions of these areas; they are outlined in

paragraph (d) of this section.) Included are records created or kept within the IDA's area of responsibility; records retired by, or referred to, the IDA's headquarters or office; and records of predecessor organizations. If a request involves the areas of more than one IDA, the IDA to whom the request was originally addressed will normally respond to it; however, the affected IDAs may consult on such requests and agree on responsibility for them. IDAs will complete all required coordination at initial denial level. This includes classified records retired to the National Archives and Records Administration when a mandatory declassification review is necessary.

(b) The initial determination of whether to make a record available or grant a fee waiver upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this regulation is applicable and should be invoked. DAs may delegate all or part of their authority to an office chief or subordinate commander. Such delegations must not slow FOIA actions. If an IDA's delegate denies a FOIA or fee waiver request, the delegate must clearly state that he or she is acting for the IDA and identify the IDA by name and position in the written response to the requester. IDAs will send the names, offices, and telephone numbers of their delegates to the Director of Information Systems for Command, Control, Communications, and Computers. IDAs will keep this information current. (The mailing address is HQDA (SAIS-PS), WASH, DC 20310-0107).

(c) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media. A FOIA release or denial action, appeal, or court review may generate public or press interest. In such case, the IDA (or delegate) should consult the Chief of Public Affairs or the command or organization PAO. The IDA should inform the PAO contacted of the issue and obtain advice and recommendations on handling its public

affairs aspect. Any advice or recommendations requested or obtained should be limited to this aspect.

Coordination must be completed within the 10-day FOIA response limit. (The point of contact for the Army Chief of Public Affairs is HQDA (SAPA-OSR), WASH, DC 20310-1500; telephone, AUTOVON 227-4122 or commercial (202) 697-4122). If the request involves actual or potential litigation against the United States, release must be coordinated with the Judge Advocate General. (See § 518.50(e)).

(d) The following officials are designated IDAs for the areas of responsibility outlined below:

(1) The Administrative Assistant to the Secretary of the Army is authorized to act for the Secretary of the Army on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, except those specified in paragraph (d) (2) through (6) of this section, as well as requests requiring the personal attention of the Secretary of the Army.

(2) The Assistant Secretary of the Army (Financial Management) is authorized to act on requests for finance and accounting records.

(3) The Assistant Secretary of the Army (Research, Development, and Acquisition) is authorized to act on requests for procurement records other than those under the purview of the Chief of Engineers and the Commander, U.S. Army Materiel Command.

(4) The Director of Information Systems for Command, Control, Communications, and Computers (DISC4) is authorized to act on requests for records pertaining to the Army Information Resources Management Program (automation, telecommunications, visual information, records management, publications and printing, and libraries).

(5) The Inspector General is authorized to act on requests for all Inspector General records under AR 20-1.

(6) The Auditor General is authorized to act on requests for records relating to audits done by the U.S. Army Audit Agency under AR 10-2. This includes requests for related records developed by the Audit agency.

(7) The Deputy Chief of Staff for Operations and Plans is authorized to act on requests for records relating to strategy formulation; force development; individual and unit training policy; strategic and tactical command and control systems; nuclear and chemical matters; use of DA forces; and military police records and reports, prisoner confinement, and correctional records.

(8) The Deputy Chief of Staff for Personnel is authorized to act on requests for case summaries, letters of instruction to boards, behavioral science records, general education records, and alcohol and drug prevention and control records. Excluded are individual treatment/test records, which are a responsibility of the Surgeon General.

(9) The Deputy Chief of Staff for Logistics is authorized to act on requests for records relating to DA logistical requirements and determinations, policy concerning material maintenance and use, equipment standards, and logistical readiness.

(10) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

(11) The Surgeon General is authorized to act on requests for medical research and development records, and the medical records of active duty military personnel, dependents, and persons given physical examination or treatment at DA medical facilities, to include alcohol and drug treatment/test records.

(12) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical relationships, rites performed by DA chaplains, and nonprivileged communications relating to clergy and active duty chaplains' military personnel files.

(13) The Judge Advocate General (TJAG) is authorized to act on requests for records relating to claims, court-martial, legal services, and similar legal records. TJAG is also authorized to act on requests for records described elsewhere in this regulation, if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional areas of responsibility of any other IDA.

(14) The Chief, National Guard Bureau, is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and active Army National Guard military personnel, including technician personnel, unless such records clearly fall within another IDA's responsibility. This authority includes, but is not limited to, National Guard organization and training files; plans, operations, and readiness files; policy files; historical files; files relating to National Guard military support, drug interdiction, and civil disturbances; construction, civil works, and ecology records dealing with

armories, facilities within the States, ranges, etc.; Equal Opportunity investigative records, aviation program records and financial records dealing with personnel, operation and maintenance, and equipment budgets.

(15) The Chief of Army Reserve is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, and all U.S. Army Reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. Records under the responsibility of the Chief of Army Reserve include records relating to USAR plans, policies, and operations; changes in the organization status of USAR units; mobilization and demobilization policies; active duty tours; and the Individual Mobilization Augmentation program.

(16) The Commander, United States Army Materiel Command (AMC) is authorized to act on requests for the records of AMC headquarters and its subordinate commands, units, and activities that relate to procurement, logistics, research and development, and supply and maintenance operations.

(17) The Commander, USACIDC, is authorized to act on requests for criminal investigative records of USACIDC headquarters and its subordinate activities. This includes criminal investigation records, investigation-in-progress records, and military police reports that result in criminal investigation reports.

(18) The Commander, United States Total Army Personnel Command, is authorized to act on requests for military personnel files relating to active duty (other than those of reserve and retired personnel) military personnel matters, personnel locator, physical disability determinations, and other military personnel administration records; records relating to military casualty and memorialization activities; heraldic activities; voting; records relating to identification cards; naturalization and citizenship; commercial solicitation; Military Postal Service Agency and Army postal and unofficial mail service; civilian personnel records and other civilian personnel matters; and personnel administration records.

(19) The Commander, United States Army Community and Family Support Center, is authorized to act on requests for records relating to morale, welfare, and recreation activities; nonappropriated funds; child development centers, community life programs, and family action programs;

retired activities; club management; Army emergency relief; consumer protection; retiree survival benefits; and records dealing with DA relationships with Social Security, Veterans' Affairs, United Service Organization, U.S. Soldiers' and Airmen's Home, and American Red Cross.

(20) The Commander, United States Army Intelligence and Security Command, is authorized to act on requests for intelligence investigation and security records, foreign scientific and technological information, intelligence training, mapping and geodesy information, ground surveillance records, intelligence threat assessment, and missile intelligence data relating to tactical land warfare systems.

(21) The Commander, U.S. Army Safety Center, is authorized to act on requests for Army safety records.

(22) The General Counsel, Army and Air Force Exchange Service (AAFES), is authorized to act on requests for AAFES records, under AR 60-20/AFR 147-14.

(23) The Commander, Forces Command (FORSCOM), as a specified commander, is authorized to act on requests for specified command records that are unique to FORSCOM under § 518.25.

(24) Special IDA authority for time-event related records may be designated on a case-by-case basis. These will be published in the *Federal Register*. Current information on special delegations may be obtained from the Office of the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PSP, WASH, DC 20310-0107.

§ 518.55 Reasons for not releasing a record.

There are seven reasons for not complying with a request for a record:

(a) The request is transferred to another DoD Component, or to another federal agency.

(b) The request is withdrawn by the requester.

(c) The information requested is not a record within the meaning of the FOIA and this Regulation.

(d) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(e) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Regulation or DoD Component supplementing regulations.

(f) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither

controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore an appeal is not appropriate.)

(g) The record is denied in accordance with procedures set forth in the FOIA and this regulation.

§ 518.56 Denial tests.

To deny a requested record that is in the possession or control of a DoD Component, it must be determined that the denial meets the following tests:

(a) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in subpart C.

(b) The use of its discretionary authority is deemed unwarranted.

§ 518.57 Reasonably segregable portions.

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that is not to reasonable to segregate portions of the records for release.

§ 518.58 Response to requester.

(a) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond. The action command or office holding the records will date- and time-stamp each request on receipt. The 10-day limit will start from the date stamped.

(b) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(c) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an

explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component. The IDA will inform the requester of his or her right to appeal, in whole or part, the denial of the FOIA or fee waiver request and that the appeal must be sent through the IDA to the Secretary of the Army (ATTN: General Counsel). (See § 518.65).

(d) The response to the requester should contain information concerning the fee status of the request, consistent with the provisions of subpart F, of this regulation. Generally, the information shall reflect one or more of the following conditions:

(1) All fees due have been received.

(2) Fees have been waived because they fall below the automatic fee waiver threshold.

(3) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver was accepted.

(4) A request for waiver has been denied.

(5) Fees due in a specified amount have not been received.

(e) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this regulation. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(f) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

§ 518.59 Extension of time.

(a) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(1) The requested record is located in whole or in part at places other than the office processing the request.

(2) The request requires the collection and evaluation of a substantial number of records.

(3) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this regulation or should be released as a matter of discretion.

(b) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted. The time may be extended only once during the initial consideration period. Only the responsible IDA can extend it, and the IDA must first coordinate with the Office of the Army General Counsel.

(c) In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with notification that he or she may treat the delay as an initial denial with a right to appeal, or with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Components are reminded that the requester still retains the right to treat this delay as a de facto denial with full administrative remedies.

(d) As an alternative to the taking of formal extensions of time as described in § 518.59(a), (b), and (c), the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

§ 518.60 Misdirected requests.

Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

§ 518.61 Records of non-U.S. government source.

(a) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the

record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552 (reference (a)) exemption (b)(4)) subpart C, exemptions, § 518.33, Number 4, and reference (ee), this regulation) will be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(b) The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of the Department of Defense from multi-national organizations, such as the North American Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through Department of State.

§ 518.62 File of initial denials.

Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records will be maintained in accordance with AR 25-400-2.

§ 518.63 Special mail services.

DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

§ 518.64 Receipt accounts.

The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially-funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(a) Receipt Account 3210 Sale of Publications and Reproductions, Freedom of Information Act. This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles. Deliver collections within 30 calendar days to the servicing finance and accounting office.

(b) Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act. This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

Appeals

§ 518.65 General.

(a) If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) Appeals of denial of records made by Army IDAs must be made through

the denying IDA to the Secretary of the Army (ATTN: General Counsel). On receipt of an appeal, the IDA will—

(1) Send the appeal to the Office of the Secretary of the Army, Office of the General Counsel, together with a copy of the documents that are the subject of the appeal, marked to show the portions withheld; the initial denial letter; and any other relevant material.

(2) Assist the General Counsel as requested during his or her consideration of the appeal.

(c) Appeals of denial of records made by the General Counsel, AAFES, shall be made to the Secretary of the Army when the Commander, AAFES, is an Army officer.

§ 518.66 Time of receipt.

An FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

§ 518.67 Time limits.

(a) The requester should be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

(b) Final determinations on appeals normally shall be made within 20 working days after receipt.

§ 518.68 Delay in responding to an appeal.

(a) If additional time is needed due to the unusual circumstances described in § 518.59, above, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(b) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 518.59, they may consider their administrative

remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

§ 518.69 Response to the requester.

(a) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(b) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

(1) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this regulation.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(5) The response shall advise the requester of the right to judicial review.

§ 518.70 Consultation.

(a) Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(b) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be provided to the Department of

Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

Judicial Actions

§ 518.71 General.

(a) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(b) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this regulation.

§ 518.72 Jurisdiction.

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

§ 518.73 Burden of proof.

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

§ 518.74 Actions by the Court.

(a) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(b) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(c) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD

Component is obligated to take the action recommended by the special counsel.

(d) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

§ 518.75 Non-United States Government source information.

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

§ 518.76 Litigation status sheet.

FOIA managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the OASD(PA), ATTN: DFOISR, with an information copy to the General Counsel, Department of Defense, ATTN: Office of Legal Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation. In the Department of the Army, HQDA TJAG (DAJA-LT), WASH DC 20310-2210 is responsible for preparing this report.

Subpart F—Fee Schedule

General Provisions

§ 518.77 Authorities.

The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (13 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et. seq.); the Defense Authorization Act for FY 87, section 954, (Pub. L. 99-661),

as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100-26).

§ 518.78 Application.

(a) The fees described in this Subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (r)) (AR 37-60), which does not supersede the collection of fees under the FOIA. Nothing in this Chapter shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(A)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(b) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed in the Collection of Fees and Fee Rates portions of this subpart. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(c) The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient

and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See § 518.78(e), for the definition of review, and § 518.86(b), for information pertaining to computer searches.

(d) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable by requesters. If it is not possible to provide copies which are clearly usable, the requester shall be notified that their copy is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed \$25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not

previously considered. The costs for such a subsequent review would be properly assessable.

§ 518.79 Fee restrictions.

(a) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(b) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(c) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(d) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(e) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-

output devices, and memory capacity equal \$24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

§ 518.80 Fee waivers.

(a) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in § 518.81 when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(b) When assessable costs for an FOIA request total \$15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(c) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(1) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(i) The subject of the request. Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the

operations and activities of the Department of Defense.

(ii) The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information which concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(iv) The significance of the contribution to public understanding. In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the

current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(2) Disclosure of the information "is not primarily in the commercial interest of the requester."

(i) The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of § 518.81 apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefits must clearly override any personal or non-profit interest.

(ii) The primary interest in disclosure. Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be

presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(d) Components are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(e) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(1) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. \$15.00-\$30.00).

§ 518.81 Fee assessment.

(a) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(b) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(1) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the component will:

(i) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e.,

30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(ii) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(2) Requesters must submit a fee declaration appropriate for the below categories.

(i) Commercial. Requesters must indicate a willingness to pay all search, review and duplication costs.

(ii) Educational or Noncommercial Scientific Institution or News Media. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(iii) All Others. Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(3) If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

(4) In the situations described by § 518.81(b) (1) and (2). Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(5) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(6) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the Component shall notify the requester of the likely

cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(7) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 (reference (ff)), and confirmed with respective Finance and Accounting Offices.

(8) After all work is completed on a request, and the documents are ready for release, Components may request payment prior to forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of § 518.81(b)(7), apply. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(9) When Components act under § 518.81, paragraphs (b) (1) through (7) of this section, the administrative time limits of the FOIA (i.e., 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissible extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(10) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request, or if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed \$25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) Commercial Requesters. Fees shall be limited to reasonable standard charges for document search, review and duplication when records are

requested for commercial use.

Requesters must reasonably describe the records sought (see § 518.22).

(1) The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(2) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(d) Educational Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the record sought (see § 518.22). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(e) Non-Commercial Scientific Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a

non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 518.22). The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in § 518.81(c), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(f) Components shall provide documents to requesters in § 518.81(d) and (e), for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(g) Representatives of the news media. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 518.22).

(1) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record

of a requester in making this determination.

(2) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (g)(1) of this section, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(h) All Other Requesters. Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 518.22). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 (reference (gg)), which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under § 518.80(a). (See also § 518.81(c)(2). DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) will be used to annotate fees for processing FOIA information. The form is available through normal publications channels.

§ 518.82 Aggregating requests.

Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be

reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment or fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

§ 518.83 Effect of the Debt Collection Act of 1982 (Pub.L. 97-365).

The Debt Collection Act of 1982 (Pub.L. 97-365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717 (reference (ff)). Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

§ 518.84 Computation of fees.

The fee schedule in this chapter shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

Collection of Fees and Fee Rates

§ 518.85 Collection of fees.

Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the

Component has determined that the fee will be in excess of \$250 (see § 518.81).

§ 518.86 Search time.

(a) Manual Search.

Type	Grade	Hourly rate (\$)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS/GM15.	25
Executive	07/GS/GM16/ES1 and above.	45

(b) Computer Search. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph a above) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

§ 518.87 Duplication.

The following table sets forth the fees that will be charged.

Type	Cost per page (cents)
Pre-Printed material	02
Office copy	15
Microfiche	25
Computer copies (tapes or printouts).	Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape)

§ 518.88 Review time (in the case of commercial requesters).

The following table sets forth fees charged for review time.

Type	Grade	Hourly rate (\$)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS15	25
Executive	07/GS16/ES1 and above.	45

§ 518.89 Audiovisual documentary materials.

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality. Army audiovisual materials are referred to as "visual information."

§ 518.90 Other records.

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

§ 518.91 Costs for special services.

Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(a) Certifying that records are true copies.

(b) Sending records by special methods such as express mail, etc.

Collection of Fees and Fee Rates for Technical Data**§ 518.92 Fees for technical data.**

(a) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this Section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under the

Collection of Fees and Fee Rates portion of this subpart for other types of information released under the FOIA. DD Form 2086-1 (Record of Freedom of Information (FOI) Processing Cost for Technical Data) will be used to annotate fees for technical data. The form is available through normal publications channels.

(b) Waiver. Components shall waive the payment of costs required in § 518.92(a), which are greater than the costs that would be required for release of this same information under the Collection of Fees and Fee Rates portion of this subpart if:

(1) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The Component determines in accordance with section 518.80(a), that such a waiver is in the interest of the United States.

(c) Fee Rates.

(1) Search Time

(i) Manual Search

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	\$13.25
(Minimum Charge)		8.30
Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates).		

(ii) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in § 518.92(c)(1)(i), for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will

be recorded as part of the computer search.

(2) Duplication

Type	Cost
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents.....	\$2.50
Engineering data (microfilm).....	
Aperture cards.....	
Silver duplicate negative, per card.....	.75
When key punched and verified, per card.....	.85
Diazo duplicate negative, per card.....	.65
When key punched and verified, per card.....	.75
35mm roll film, per frame.....	.50
16mm roll film, per frame.....	.45
Paper dprints (engineering drawings), each.....	1.50
Paper reprints of microfilm indices, each.....	.10

REVIEW TIME

Type	Grade	Hourly rate
Clerical.....	E9/GS8 and below.	\$13.25
(Minimum Charge)		8.30

Professional and Executive (To be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates.)

Other Technical Data Records

Charges for additional services not specifically provided in § 518.92(c), consistent with DoD Instruction 7230.7 (reference (r)), shall be made by Components at the following rates:

Minimum charge for office copy (up to six images).....	\$3.50
Each additional image.....	.10
Each typewritten page.....	3.50
Certification and validation with seal, each.....	5.20
Hand-drawn plots and sketches, each hour or fraction thereof.....	12.00

Subpart G—Reports**Reports Control****§ 518.93 General.**

The reporting requirement outlined in this chapter is assigned Report Control Symbol DD-PA(A)1365. Prepare the annual report using the format in § 518.96. Section 518.97 provides a worksheet for preparing the annual report.

Annual Report**§ 518.94 Reporting time.**

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those

items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference (s)) (AR 25-9). The standard data elements are contained in DoD 5000.12-M (reference (hh)). The Army will follow guidelines below and submit the information to the Army Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, ATTN: ASQNS-OP-F, Room 1146, Hoffman Building I, Alexandria, VA 22331-0301 by the second week of each January.

(a) Each reporting activity will submit the information requested in § 518.95 (a) (1), (2), (3), (i), (j), and (k). Data will be collected throughout the year on DD Form 2086.

(b) Each IDA will submit the information requested in § 518.95, excluding paragraphs (d) through (h).

(c) The Judge Advocate General, Army will submit the information requested in § 518.95(g).

(d) The Army General Counsel will submit the information requested in § 518.95 (d) through (f).

(e) The Information Systems Command[EN]Pentagon will compile the data submitted in the Department of the Army's annual Reporting of Freedom of Information Processing Costs (RCS DD-PA (A) 1365). This report will be sent through the DISC4 (SAIS-PS), WASH DC 20310-0107, to the Director of Freedom of Information and Security Review by 31 January each year.

§ 518.95 Annual report content.

The following instructions and attached format shall be used in preparing the annual report (see § 518.96):

(a) *Item 1.* (1) Completed Public Requests: Enter the total number of FOIA requests received and responded to during the reporting period.

(2) Completed Reportable Requests: Enter the number of actions taken on a completed public request. To arrive at this figure, count the number of blocks checked in item a. of the Annual Report Worksheet (see § 518.97) for each request processed. (Note: This figure will be equal to or greater than paragraph (a)(1) of this section.)

(3) Number of Requests Denied: Enter the number of FOIA requests which were denied in whole or in part based on one or more of the nine FOIA exemptions.

(4) Other Reason Responses: Enter the number of FOIA requests in which you

were unable to provide the requested information based on an "Other Reason" response. (See paragraph (b)(3) of this section for an explanation of "Other Reason" responses).

(5) Total: Enter the sum of paragraphs (a)(3) and (a)(4) of this section.

(b) *Item 2.* (1) Exemptions Invoked on Initial Determinations: Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than that of paragraph (a)(3) of this section.

(2) (b)(c) exemption. Statutes Invoked on Initial Determinations: Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking the Atomic Energy Act of 1954, or the National Security Act of 1947.

(3) Initial Request Other Reason Responses: Identify the "other reason" response cited when responding to an FOIA request and enter the number of times each was claimed.

(i) Transferred Requests: Enter the number of times a request was transferred to another DoD Component or Federal Agency for action.

(ii) Lack of Records: Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(iii) Failure of Requester to Reasonably Describe Record: Enter the number of times an FOIA request could not be acted on since the requester failed to reasonably describe the record(s) being sought.

(iv) Other Failures by Requester to Comply with Published Rules and/or Directives: Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(v) Request/Appeal Withdrawn by Requester: Enter the number of times a requester withdrew a request and/or appeal.

(vi) Not an Agency Record: Enter the number of times a requester was provided a response indicating the requested information was not an agency record. Total: Enter the sum of columns 1 through 6. The total will be equal to or greater than paragraph (a)(4) of this section, since more than one other reason response may be claimed.

(c) *Item 3.* Initial denial authorities (IDAs by participation). (1) Total IDAs Authorized: Enter the total number of IDA's at your activity.

(2) Individuals Involved in Adverse Determinations: Enter the name, grade, activity and title of each individual who

signed a partial and/or total denial response and cite the number of instances of participation.

(d) *Item 4.* Number of appeals and results. Number of Appeals: Enter the disposition of appeals under the appropriate category and then the total.

(e) *Item 5.* (1) Exemptions Invoked on Appeal Determinations: Identify the exemption(s) claimed for each appeal that is denied in whole or in part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to or greater than the total listed in paragraph (d) of this section.

(2) Statutes Invoked on Appeal Determinations: Identify the statute(s) cited when you claimed a "(b)(3)" exemption.

(3) Other Reasons Cited on Appeal Determinations: Identify the "other reason" response when responding to an appeal and enter the number of times each was claimed and the total.

(f) *Item 6.* Participation of Appellate Authorities (Those Responsible for Denials in Whole or in Part): Enter the name, grade, activity, and title of each individual who signed a partial and/or total denial response and cite the number of instances of participation.

(g) *Item 7.* Court Opinions and Actions Taken: Briefly describe the results of each completed court action the Judge Advocate General and/or the General Counsel participated in during the calendar year. There is no requirement to submit lengthy narratives, nor narratives for court actions pending a decision.

(h) *Item 8.* FOIA Implementation Rules or Regulations: List all changes or revisions of rules or regulations affecting the implementation of The FOIA Program, followed by the Federal Register reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

(i) *Item 9.* FOIA Instructional and Educational Efforts: Report what training and/or seminars your activity has given or attended during this reporting period.

(j) *Item 10.* (1) Cost of Routine Request: Some reporting activities shall find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised so that costs are comprehensive to include a 25 percent overhead, yet are not duplicated elsewhere in the report.

(2) Personnel Costs: (Civilian and Military)

(i) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade: Personnel costs are reported in two ways. This section uses a manyear/wage type of costing by grade. To achieve this computation,

identify those individuals who are primarily involved in the planning, program management and/or administrative handling of FOIA requests. Use DoD 7220.9-M (reference (v)) for military personnel and Office of

Personnel Management salary table for civilian personnel to identify salaries.

Table G-1 shows how the cost computation is made.

TABLE G-1.—SAMPLE COMPUTATION.

Grade	No. of personnel	Salary	Percentage of time	Costs
O-5.....	1	\$50,000	10	\$5,000
O-1.....	1	21,000	30	6,000
GS-12.....	1	35,000	50	17,500
GS-5.....	1	18,000	50	9,000

Notes: 1. To determine the manyear computation: Add the total percentage of time and divide the percentage by 100.

2. Sample Computation: Manyears = 140% divided by 100 = 1.4 manyears.

(ii) Direct costs for other personnel involved in processing request not included above upon accumulation of total hourly data: This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (See subpart F, Collection of Fees and Fee Rates for Technical Data).

(A) Search Time Cost. This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(B) Classification Review Costs. This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g. doing all that is necessary to excise them and otherwise prepare them for release. It does not

include time spent resolving general legal or policy issues regarding the application of exemptions.

(C) Coordination and Approval/Denial Decision Costs. This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(D) Correspondence and Form Preparation Costs. This includes all costs involved in typing responses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(E) Other Activity Costs—This includes all other processing costs not covered above, such as processing time by the mail room.

(F) Other Case Related Costs: Using the fee schedule, enter the total amounts incurred in each area to process FOIA requests.

(G) Other Operating Costs: Report all other costs which are easily identifiable, such as: per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(H) Summary: The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

(iii) Application of Overhead. The overhead rate is 25% and includes the cost of supervision, space and

administrative support. Add items 1 and 2, then multiply the sum by 25%.

(k) Item 11. Formal Time Extensions: Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension, because of:

(1) Location: The need to search for and collect the requested records from another activity that was separate from the office processing the request.

(2) Volume: The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(3) Consultation: The need for consultation with another agency having substantial interest in the material requested.

(4) Court Involvement: Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, report the number of instances the court allowed additional time because the Component was unable to comply with applicable time limits.

§ 518.96 Annual reporting format.

See § 518.94 for instructions to complete this report and for reporting times.

Item 1

Completed public requests	Completed reportable requests	Number of requests denied (partial and total)	Number of "other reasons" responses made	Total (C+D)
A	B	C	D	E

Item 2

A. Exemptions Claimed in Denial Letters:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Claimed Denial Letters:

List of "(b)(3)" statutes claimed

Number of times cited

C. "Other Reasons" Cited in Response to FOIA Requests	1	2	3	4	5	6	Total

Item 3—Denials and "other reason" responses

A. Total number of IDAs authorized to sign denial letters

B. List of All Individuals Who Signed a Denial Response:

Name	Rank	Title	Number of instances of participation	
			Exemption	Other

Item 4

A. Number of appeals received and action taken:

Granted in full	Granted in part	Denied in full	Total
1	2	3	4

Item 5

A. Exemptions invoked on appeal determination:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes invoked on appeal determinations:

List of "(b)(3)" statutes invoked

Number of times cited

C. "Other reasons" cited on appeal determination	1	2	3	4	5	6	Total

Item 6

A. List of all individuals who signed an appeal determination response:

Name	Rank	Title	Number of instances of participation	
			Exemption	Other

Item 7

A. Court opinions and actions taken, for example:

J. Q. Public v. Department of the Army, CMI No. 87-2600 (S.D. Cal.)

On January 1, 1987, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army General attorney. Final order, May 1987, ordered release of majority of CID report of investigation.

Item 8

A. FOIA implementation rules or regulations (published during the reporting period):

Document identification	Federal register references		
	Number	Date	Page

Item 9

A. FOIA instructional and educational efforts:

Course	Sponsor	Date	Hours

Item 10

A. Cost of Routine Requests Processed:
(Number of reportable requests X cost factor per request.) \$

B. Personnel Costs (Civilian and Military):

1. Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade.

Total Manyears

2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

a. Search Time Costs

b. Classification Review and Excising Action Costs

c. Coordination/Approval/Denial Decision Costs

d. Correspondence and Form Preparation Costs

e. Other Activity Costs

Total Manhour Costs

3. Application of Overhead

(Subtotal 1 + 2) X 25% overhead

Total of Personnel Costs

C. Other Case Related Costs:

1. Computer

2. Office Copy Reproduction

3. Microfiche Reproduction

4. Cost of Printed Records

Total of Other Costs

D. Other Operating Costs:

1. Reporting Costs

a. Operational

b. User

c. Overhead: (a + b) X 25%

2. Other Costs as Directed or Which can be Reasonably Ascertained.

Total Other Operating Costs (Subtotal 1 + 2)

E. Summary:

1. Total Costs of Sections 10A through 10D

2. Amount Collected from Requesters during this Reporting Period:

a. Search

b. Copy

c. Review.....
d. Total Collected.....

Item 11

A. Formal Time Limit Extension Taken:

Location	Volume	Consultation	Court involvement
1	2	3	4
B. Total			

§ 518.97 Annual report worksheet.

See § 518.94 for instructions on completing this worksheet.

a. Action(s) taken on completed public request:

- ____ Granted in Full
____ Granted in Part
____ Denied

Other: _____ Transferred to: _____

- ____ Lack of Records
____ Requester failed to reasonably describe the record
____ Requester failed to comply with established rules/directives
____ Requester withdrew request/appeal
____ Not an agency record

b. Completed reportable

requests: _____

(Count the number of actions checked in a. and enter total)

c. Statutory FOIA exemptions invoked: _____

(Enter total number blocks checked below)

- ____ (b)(1)
____ (b)(2)
____ (b)(3)
____ (b)(4)
____ (b)(5)
____ (b)(6)
____ (b)(7)
____ (b)(8)
____ (b)(9)

d. List of (b)(3) statutes invoked:

e. Name, command and title of initial denial authority:

f. Remarks:

Subpart H—Education and Training**Responsibility and Purpose****§ 518.98 Responsibility.**

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOIA requests, and should provide a thorough understanding of the procedures outlined in this regulation.

§ 518.99 Purpose.

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

§ 518.100 Scope and principles.

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this regulation. The program should be designed to accomplish the following objectives:

- Familiarize personnel with the requirements of the FOIA and its implementation by this regulation.
- Instruct personnel, who act in FOIA matters, concerning the provisions of this regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.
- Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(d) Advise personnel of the penalties for noncompliance with the FOIA.

§ 518.101 Implementation.

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (PA).

§ 518.102 Uniformity of legal interpretation.

In accordance with DoD Directive 5400.7 (reference (b)), the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program. This regulation provides procedures for contacting the DOD General Counsel where required.

Appendix A to Part 518—Unified Commands-Processing Procedures for FOI Appeals**1. General**

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Command are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program.

This policy represents an exception to the policies in DoD Directive 5100.3 (reference (f)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and DoD Instruction 5400.10 (reference (ii)) and to forward directly to the OASD (PA) all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

1. Responsibilities of Commands

Unified Commanders in Chief shall:

- Designate the officials authorized to deny initial FOIA requests for records.
- Designate an office as the point-of-contact for FOIA matters.
- Refer FOIA cases to the ASD (PA) for review and evaluation when the issues raised are of unusual significance, precedent setting,

or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the ASD (PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Assistant Secretary of Defense (Public Affairs), the Pentagon, Washington, DC 20301-1400.

i. Upon request, submit to ASD (PA) a copy of the records that were denied. ASD (PA) shall make such requests when adjudicating appeals.

3. Fees for FOI Requests

The fees charged for requested records shall be in accordance with subpart F.

4. Communications

Excellent communication capabilities currently exist between the OASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOIA cases that are time sensitive.

5. Reporting Requirements

a. The Unified Commands shall submit to the ASD(PA) an annual report. The instructions for the report are outlined in subpart G.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA(A)1365.

Appendix B to Part 518—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Joint Staff, the Military Departments, the Unified Commands, the Defense Agencies, and the DoD Field Activities.

b. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD

Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOIA Requests[EH]

a. Office of the Secretary of Defense and the Joint Staff. Send all requests for records from the below listed offices to: Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, The Pentagon, Washington, DC 20301-1400.

(1) Executive Secretariat
(2) Under Secretary of Defense (Policy)
(a) Deputy Under Secretary of Defense (Policy)

(b) Deputy Under Secretary of Defense (Planning & Resources)

(c) Deputy Under Secretary of Defense (Trade Security Policy)

(3) Under Secretary of Defense (Acquisition)

(a) Assistant Secretary of Defense (Production & Logistics)

(b) Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)

(c) Assistant to the Secretary of Defense (Atomic Energy)

(d) Director of Defense Research and Engineering

(e) Director of Small and Disadvantaged Business Utilization

(f) Director, Program Integration

(4) Comptroller of the Department of Defense

(5) Assistant Secretary of Defense (Force Management & Personnel)

(6) Assistant Secretary of Defense (Health Affairs)

(7) Assistant Secretary of Defense (International Security Policy)

(a) Deputy Assistant Secretary of Defense (European & NATO Policy)

(b) Deputy Assistant Secretary of Defense (Negotiations Policy)

(c) Deputy Assistant Secretary of Defense (Nuclear Forces & Arms Control Policy)

(8) Assistant Secretary of Defense (International Security Affairs)

(a) Deputy Assistant Secretary of Defense (African Affairs)

(b) Deputy Assistant Secretary of Defense (East Asian & Pacific Affairs)

(c) Deputy Assistant Secretary of Defense (Inter-American Affairs)

(d) Deputy Assistant Secretary of Defense (Near East & South Asian Affairs)

(e) Deputy Assistant Secretary of Defense (Policy Analysis)

(9) Defense Security Assistance Agency

(10) Assistant Secretary of Defense (Legislative Affairs)

(11) Assistant Secretary of Defense (Public Affairs)

(12) Assistant Secretary of Defense (Program Analysis & Evaluation)

(13) Assistant Secretary of Defense (Reserve Affairs)

(14) Assistant to the Secretary of Defense (Intelligence Oversight)

(15) General Counsel, Department of Defense

(16) Director of Net Assessment

(17) Director of Operational Test and Evaluation

(18) Defense Advanced Research Projects Agency

(19) Strategic Defense Initiative Organization

(20) Defense Systems Management College

(21) National Defense University

(22) Armed Forces Staff College

(23) Department of Defense Dependents Schools

(24) Uniformed Services University of the Health Sciences

b. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR part 518 (reference (jj)). Appendix B. Send requests to the Army Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, ATTN: ASQNS-OP-F, Room 1146, Hoffman I, 2461 Eisenhower Avenue, Alexandria, VA 22331-0301 for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records. Send requests to particular installations or organizations as follows:

(1) Current publications and records of DA field commands, installations, and organizations.

(a) Send the request to the commander of the command, installation, or organization, to the attention of the Freedom of Information Act Official.

(b) Consult AR 25-400-12 for more detailed listings of all record categories kept in DA offices.

(c) Contact the installation or organization public affairs officer for help if you cannot determine the official within a specific organization to whom your request should be addressed.

(2) Department of the Army publications.

(a) Write to the U.S. Government Printing Office, which has many DA publications for sale. Address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001.

(b) Use the facilities of about 1,000 Government publication depository libraries throughout the United States. These libraries have copies of many DA publications. Obtain a list of these libraries from the Superintendent of Documents at the above address.

(c) Send requests for current administrative, training, technical, and supply publications to the National Technical Information Service, U.S. Department of Commerce, ATTN: Order Preprocessing Section, 5285 Port Royal Road, Springfield, VA 22151-2171; commercial telephone, (703) 487-4600. The National Technical Information Service handles general public requests for unclassified, uncopyrighted, and nondistribution-restricted Army publications not sold through the Superintendent of Documents.

(3) Military personnel records. Send requests for military personnel records of information as follows:

(a) Army Reserve personnel not on active duty and retired personnel—Commander, U.S. Army Reserve Personnel Center, 9700 Page Blvd., St. Louis, MO 63132-5200; commercial telephone, (314) 263-7600.

(b) Army officer personnel discharged or deceased after 1 July 1917 and Army enlisted

personnel discharged or deceased after 1 November 1912—Director, National Personnel Records Center, 9700 Page Blvd., St. Louis, MO 63132-5100.

(c) Army personnel separated before the dates specified in (ii) above—Textual Reference Division, Military Reference Branch, National Archives and Records Administration, Washington, DC 20408-0001.

(d) Army National Guard officer personnel—Chief, National Guard Bureau, Army National Guard enlisted personnel—Adjutant General of the proper States.

(e) Active duty commissioned and warrant officer personnel—Commander, U.S. Total Army Personnel Command, ATTN: TAPC-ALS, Alexandria, VA 22332-0405; commercial telephone, (703) 325-4053. Active duty enlisted personnel—Commander, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-RF, Fort Benjamin Harrison, IN 46249-4701; commercial telephone, (317) 542-3643.

(4) Medical records.

(a) Medical records of non-active duty military personnel. Use the same addresses as for military personnel records.

(b) Medical records of military personnel on active duty. Address the medical treatment facility where the records are kept. If necessary, request locator service per (e) above.

(c) Medical records of civilian employees and all dependents. Address the medical treatment facility where the records are kept. If the records have been retired, send requests to the Director, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118-4199.

(5) Legal records.

(a) Records of general courts-martial and special courts-martial in which a bad conduct discharge was approved. For cases not yet forwarded for appellate review, apply to the staff judge advocate of the command having jurisdiction over the case. For cases forwarded for appellate review and for old cases, apply to the U.S. Army Legal Service Agency, ATTN: JALS-CC, Nassif Building, Falls Church, VA 22041-5013; AUTOVON 289-1888, commercial telephone, (202) 756-1888.

(b) Records of special courts-martial not involving a bad conduct discharge. These records are kept for 10 years after completion of the case. If the case was completed within the past 3 years, apply to the staff judge advocate of the headquarters where it was reviewed. If the case was completed from 3 to 10 years ago, apply to the National Personnel Records Center (Military Records), 9700 Page Blvd., St. Louis, MO 63132-5100. If the case was completed more than 10 years ago, the only evidence of conviction is the special courts-martial order in the person's permanent records. Request as in (3) above.

(c) Records of summary courts-martial. Locally maintained records are retired 3 years after action of the supervisory authority. Request records of cases less than 3 years old from the staff judge advocate of the headquarters where the case was reviewed. After 10 years, the only evidence of conviction is the summary courts-martial order in the person's permanent records.

Requests as in (3) above.

(d) Requests submitted under (b) and (c) above. These requests will be processed in accordance with chapter V. The IDA is the Judge Advocate General, HQDA (DAJA-CL), WASH DC 20310-2213; AUTOVON 225-1891, commercial telephone, (202) 695-1891.

(e) Administrative settlement of claims. Apply to the Chief, U.S. Army Claims Services, ATTN: JACS-TCC, Fort George G. Meade, MD 20755-5360; AUTOVON 923-7860, commercial telephone, (301) 677-7860.

(f) Records involving debarred or suspended contractors. Apply to HQDA (JALS-PF), WASH DC 20310-2217; AUTOVON 285-4278, commercial telephone, (202) 504-4278.

(g) Records of all other legal matters (other than records kept by a command, installation, or organization staff judge advocate). Apply to HQDA (DAJA-AL), WASH DC 20310-2212; AUTOVON 224-4316, commercial telephone, (202) 694-4316.

(6) Civil works program records. Civil works records include those relating to construction, operation, and maintenance for the improvement of rivers, harbors, and waterways for navigation, flood control, and related purposes, including shore protection work by the Army. Apply to the proper division or district office of the Corps of Engineer. If necessary to determine the proper office, contact the Commander, U.S. Army Corps of Engineers, ATTN: CECC-K, WASH DC 20314-1000; commercial telephone, (202) 272-0028.

(7) Civilian personnel records. Send requests for personnel records of current civilian employees to the employing installation. Send requests for personnel records of former civilian employees to the Director, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118-4199.

(B) Procurement records. Send requests for information about procurement activities to the contracting officer concerned or, if not feasible, to the procuring activity. If the contracting officer or procuring activity is not known, send inquiries as follows:

(a) Army Materiel Command procurement: Commander, U.S. Army Materiel Command, ATTN: AMCPA, 5001 Eisenhower Ave., Alexandria, VA 22333-0001.

(b) Corps of Engineers procurement: Commander, U.S. Army Corps of Engineers, ATTN: CECC-K, WASH DC 20314-1000; commercial telephone, (202) 272-0028.

(c) All other procurement: HQDA (DAJA-KL), WASH DC 20310-2208; AUTOVON 225-6209, Commercial telephone, (202) 695-6209.

(9) Criminal investigation files. Send requests involving criminal investigation files to the Commander, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 2301 Chesapeake Ave., Baltimore, MD 21222-4099; commercial telephone, (301) 234-9340. Only the Commanding General, USACIDC, can release any USACIDC-originated criminal investigation file.

(10) Personnel security investigation files and general Army intelligence records. Send requests for personnel security investigation files, intelligence investigation and security records, and records of other Army intelligence matters to the Commander, U.S. Army Intelligence and Security Command,

ATTN: IACSF-FI, Fort George G. Meade, MD 20755-5995.

(11) Inspector General records. Send requests involving records within the Inspector General system to HQDA (SAIG-ZXL), WASH DC 20310-1714. AR 20-1 governs such records.

(12) Army records in Government records depositories.

(a) Noncurrent Army records are in the National Archives of the United States, WASH DC 20408-0001; in Federal Records Centers of the National Archives and Records Administration; and in other records depositories. Requesters must write directly to the heads of these depositories for copies of such records.

(b) A list of pertinent records depositories is published in AR 25-400-2, table 6-1.

c. Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOIA request. Send requests to Chief of Naval Operations, Code OP-09B30, Room 5E521, Pentagon, Washington, DC 20350-2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MI-3, HQMC, Room 4327, Washington, DC 20308-0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. Department of the Air Force. Air Force records may be requested from the Commander of any Air Force installation, major command, or separate operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to Secretary of the Air Force, ATTN: SAF/AADS (FOIA), Washington, DC 20330-1000.

e. Defense Contract Audit Agency (DCAA). DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOIA requests to the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304-6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. Defense Communications Agency (DCA). DCA records may be requested from any DCA field activity or from its headquarters. Requesters should send FOIA requests to Defense Communications Agency, Code H104, Washington, DC 20305-2000.

g. Defense Intelligence Agency (DIA). FOIA requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: RTS-1B, Washington, DC 20340-3299.

h. Defense Investigative Service (DIS). All FOIA requests for DIS records should be sent to the Defense Investigative Service, ATTN: V0020, 1900 Half St., SW, Washington, DC 20324-1700.

i. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOIA requests to Defense Logistics Agency, ATTN:

DLA-XA, Cameron Station, Alexandria, VA 22304-6130.

j. Defense Mapping Agency (DMA). FOIA requests for DMA records may be sent to the Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137.

k. Defense Nuclear Agency (DNA). FOIA requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, Room 111, Washington, DC 20305-1000.

1. National Security Agency (NSA). FOIA requests for NSA records may be sent to the National Security Agency/Central Security Service, ATTN: Q-43, Fort George G. Meade, MD 20755-6000.

m. Office of the Inspector General, Department of Defense (IG, DoD). FOIA requests for IG, DoD records may be sent to the Department of Defense, Office of the Inspector General, Assistant Inspector General for Investigations, ATTN: FOIA Coordinator, 400 Army Navy Drive, Arlington, Virginia 22202.

3. Other Addresses

Although the below organizations are OSD and Joint Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

a. Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS). Director, OCHAMPUS, ATTN: Freedom of Information Officer, Aurora, CO 80045-6900.

b. Chairman, Armed Services Board of Contract Appeals (ASBCA). Chairman, Armed Services Board of Contract Appeals, Hoffman II, 200 Stovall Street, Alexandria, VA 22332-0002.

c. U.S. Central Command. U.S. Central Command/CCAG, MacDill Air Force Base, FL 33608.

d. U.S. European Command. Records Administrator, Headquarters, U.S. European Command/ECJ1-AR (FOIA), APO New York 9128-4209.

e. U.S. Southern Command. Attorney-Advisor (International), Headquarters U.S. Southern Command/SCSJA, APO Miami 34003-0007.

f. U.S. Pacific Command. Administrative & Security Programs Division (J147A), Joint Secretariat, CINCPAC, Box 28, Camp H. M. Smith, HI 96861-5025.

g. U.S. Special Operations Command. Freedom of Information Officer, ATTN: U.S. Special Operations Command, MacDill Air Force Base, FL 33608.

h. U.S. Atlantic Command. Commander-in-Chief, Atlantic Command, Code J008, Norfolk, VA 23511.

i. U.S. Space Command. Chief, Records Management Division, Directorate of Administration, United States Space Command, Peterson Air Force Base, CO 80914-5001.

4. National Guard Bureau

FOIA requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, (NGB-DAI), Pentagon, Room 2C362, Washington, DC 20310-2500.

5. Miscellaneous

If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Office of the

Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, The Pentagon, Washington, DC 20301-1400.

Appendix C to Part 518—Litigation Status Sheet

1. Case Number (Number used by Component for reference ses. (for DA, use case name))
2. Requester
3. Document Title or Description
4. Litigation
 - a. Date Complaint Filed
 - b. Court
 - c. Case File Number
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
 - a. Court's Finding
 - b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
 - a. Date Complaint Filed
 - b. Court
 - c. Case File Number
 - d. Court's Finding
 - e. Disciplinary Action (as appropriate)

Appendix D to Part 518—Other Reason Categories

1. Transferred Requests.

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one Component to another, or to another Federal Agency.

2. Lack of Records.

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record.

This category is specifically based on section 552(a)(3)(a) of the FOIA (reference (a)).

4. Other Failures by Requesters to Comply with Published Rules or Directives.

This category is based on section 552(a)(3)(b) of the FOIA (reference a)) and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester.

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. Not an Agency Record.

This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this regulation.

Appendix E to Part 518—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/Staff/United Commands, Defense Agencies, and the DoD Field Activities
Department of the Army
Department of the Navy

Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency
Office of the Inspector General, Department of Defense

Appendix F to Part 518—Internal Control Review Checklist (AR 25-55)

An Internal Control Review Checklist (ICRC) is the method used to identify the combination of internal controls required for a specific task or subtask based on an evaluation by the HQDA functional proponent of the general control environment, risk, control objectives, and cost factors. Assessable unit managers will use this checklist in testing to ensure specified internal controls are in place and working as intended.

TASK: Army Information Management
SUBTASK: Records Management
THIS CHECKLIST: Freedom of Information Act Program

ORGANIZATION:

ACTION OFFICER:

REVIEWER:

DATE COMPLETED:

ASSESSABLE UNIT: The specific managers responsible for using this checklist (e.g., at applicable FOA, MACOM, SIO, and TOE division headquarters) will be designated by the cognizant headquarters' staff functional principal. The responsible principal and mandatory schedule for using the checklist will be shown in the annual updated Management Control Plan.

EVENT CYCLE 1: Establish and Implement a Freedom of Information Act Program

RISK: If the prescribed policies, procedures, and responsibilities of the Freedom of Information Act Program are not followed the public would have the ability to obtain access to and release of Army records.

CONTROL OBJECTIVE: To ensure that prescribed policies, procedures, and responsibilities contained in 5 U.S.C. 552 are followed to allow access and release of Army records to the public.

CONTROL TECHNIQUE: The document used to accomplish the control objective is AR 25-55.

1. Ensure that a Freedom of Information Act Program is established and implemented.

2. Appoint an individual with Freedom of Information Act responsibilities and ensure designation of appropriate staff to assist him/her.

3. Appoint an individual with Operations Security (OPSEC) responsibilities, if required.

Test Questions:

1. Is a Freedom of Information Act Program established and implemented in your organization?

Response: Yes _____ No _____ NA _____

Remarks: 1

2. Is an individual appointed Freedom of Information Act responsibilities?

Response: Yes _____ No _____ NA _____

Remarks: 1

3. Is an individual appointed OPSEC responsibilities, if required?

Response: Yes ___ No ___ NA ___

Remarks: 1

4. Is DA Form 4948-R, Freedom of Information Act (FOIA)/Operations Security (OPSEC) Desk Top Guide Used?

Response: Yes ___ No ___ NA ___

Remarks: 1

5. Does DA Form 4948-R contain the current name and office telephone number of the FOIA/OPSEC advisor?

Response: Yes ___ No ___ NA ___

Remarks: 1

6. Are provisions of AR 25-XX concerning the protection of OPSEC sensitive information regularly brought to the attention of managers responsible for responding to FOIA requests and those responsible for control of Army records?

Response: Yes ___ No ___ NA ___

Remarks: 1

7. Are rules governing "For Official Use Only" information understood and properly applied by functional proponents?

Response: Yes ___ No ___ NA ___

Remarks: 1

8. Are names and duty addresses of Army personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories being denied or forwarded to the proper initial denial authority (IDA) for denial?

Response: Yes ___ No ___ NA ___

Remarks: 1

9. Is the format contained in AR 25-XX, paragraph 7-202, used when preparing the annual FOIA report?

Response: Yes ___ No ___ NA ___

Remarks: 1

10. Is the worksheet contained in AR 25-XX, paragraph 7-203, used when preparing the annual FOIA report?

Response: Yes ___ No ___ NA ___

Remarks: 1

11. Is the input for the annual FOIA report forwarded to Information Systems Command-Pentagon by the second week of each January?

Response: Yes ___ No ___ NA ___

Remarks: 1

EVENT CYCLE 2: Processing FOIA Requests

Risk: Failure to process FOIA requests correctly and release non-exempt Army records to the public could subject the Department of the Army or individuals to litigation.

Control Objective: FOIA requests are processed correctly.

Control Technique:

1. Ensure FOIA requests are logged into a formal control system.

2. Ensure FOIA requests are answered promptly and correctly.

3. Ensure Army records are withheld only when they fall under the purview of one or more of the nine FOIA exemptions.

4. Ensure FOIA requests are denied by properly delegated/designated IDAs.

5. Ensure all appeals are forwarded to the Office of the Army General Counsel.

Test Questions:

1. Are FOIA requests logged into a formal control system?

Response: Yes ___ No ___ NA ___

Remarks: 1

2. Are all FOIA requests date and time stamped upon receipt?

Response: Yes ___ No ___ NA ___

Remarks: 1

3. Is the 10 working day time limit met when replying to FOIA requests?

Response: Yes ___ No ___ NA ___

Remarks: 1

4. When more than 10 working days are required to respond, is the FOIA requester informed, explaining the circumstances requiring the delay and provided an approximate date for completion?

Response: Yes ___ No ___ NA ___

Remarks: 1

5. Are Army records withheld only when they fall under one or more of the nine FOIA exemptions?

Response: Yes ___ No ___ NA ___

Remarks: 1

6. Is the FOIA requester informed when a FOIA request is referred to another Army activity or organization?

Response: Yes ___ No ___ NA ___

Remarks: 1

7. Do denial letters contain the name and title or position of the official who made the denial determination, explain the basis for the denial determination, cite the exemptions on which the denial is based, and advise the FOIA requester of his or her right to appeal the denial within 60 days to the Secretary of the Army (Office of the Army General Counsel)?

Response: Yes ___ No ___ NA ___

Remarks: 1

8. Is the FOIA requester informed of the appellate procedures when an IDA denies a record in whole or in part?

Response: Yes ___ No ___ NA ___

Remarks: 1

9. Is the Chief of Legislative Liaison notified of all releases of information to members of Congress or staffs of congressional committees?

Response: Yes ___ No ___ NA ___

Remarks: 1

10. Are FOIA requests denied only by properly delegated/designated IDAs?

Response: Yes ___ No ___ NA ___

Remarks: 1

11. Is the servicing judge advocate consulted prior to forwarding a FOIA request to an IDA for action?

Response: Yes ___ No ___ NA ___

Remarks: 1

12. Are the following items included when forwarding a FOIA request to an IDA for a determination of releasability?

a. A copy of the legal review provided by the local legal advisor?

Response: Yes ___ No ___ NA ___

Remarks: 1

b. The original copy of the FOIA request?

Response: Yes ___ No ___ NA ___

Remarks: 1

c. Copies of the requested information indicating portions recommended for withholding?

Response: Yes ___ No ___ NA ___

Remarks: 1

d. A copy of the acknowledgement of receipt to the requester?

Response: Yes ___ No ___ NA ___

Remarks: 1

e. A telephone point of contact?

Response: Yes ___ No ___ NA ___

Remarks: 1

f. The recommendation FOIA exemption?

Response: Yes ___ No ___ NA ___

Remarks: 1

g. Any recommendation to deny a request in whole or in part?

Response: Yes ___ No ___ NA ___

Remarks: 1

13. Are all FOIA appeals forwarded to the Office of the General Counsel for a decision with a copy of denied and released records?

Response: Yes ___ No ___ NA ___

Remarks: 1

14. Is a copy of the FOIA denial letter included when forwarding appeals to the Office of the General Counsel?

Response: Yes ___ No ___ NA ___

Remarks: 1

15. Is DD Form 2086-R, Record of Freedom of Information (FOI) Processing Cost, used to record costs associated with the processing of a FOIA request?

Response: Yes ___ No ___ NA ___

Remarks: 1

16. Is DD Form 2086-1-R, Record of Freedom of Information (FOI) Processing Cost for Technical Data, used to record costs associated with the processing of a FOIA request for technical data?

Response: Yes ___ No ___ NA ___

Remarks: 1

17. Is the FOIA requester notified when charges will exceed \$250.00?

Response: Yes ___ No ___ NA ___

Remarks: 1

18. Are fees collected at the time the requester is provided the records?

Response: Yes ___ No ___ NA ___

Remarks: 1

19. Are commercial requesters charged for all search, review, and duplication costs?

Response: Yes ___ No ___ NA ___

Remarks: 1

20. Are educational institutions, noncommercial scientific institutions, or news media charged for duplication only, in excess of 100 pages, if more than 100 pages of records are requested?

Response: Yes ___ No ___ NA ___

Remarks: 1

21. Are the first 2 hours of search time, and the first 100 pages of duplication provided without charge to all "other" category requesters?

Response: Yes ___ No ___ NA ___

Remarks: 1

22. Are FOIA fees collected and delivered to the servicing finance and accounting office within 30 calendar days after receipt?

Response: Yes ___ No ___ NA ___

Remarks: 1

23. Are FOIA fees collected for technical data retained by the organization providing the technical data?

Response: Yes ___ No ___ NA ___

Remarks: 1

EVENT CYCLE 3: Records Maintenance

Risk: Valuable records needed for court actions are destroyed or cannot be located.

Control Objective: Records containing "For Official Use Only" information are correctly marked and FOIA requests are properly maintained throughout their life cycle.

Control Technique: Ensure the prescribed policies and procedures are followed during the life cycle of information.

Test Questions:

1. Are records that fall within the purview of Exemption 2 through 9 marked "For Official Use Only" at the time of creation?

Response: ___ Yes ___ No ___ NA ___

Remarks:

2. Are unclassified documents containing "For Official Use Only" information marked "For Official Use Only" in bold letters at least $\frac{3}{16}$ of an inch high at the bottom of the outside of the front cover (if any), on the first page, and on the outside of the backcover (if any)?

Response: ___ Yes ___ No ___ NA ___

Remarks:

3. Are individual pages containing both "For Official Use Only" and classified information marked at the top and bottom with the highest security classification of information appearing on the page?

Response: ___ Yes ___ No ___ NA ___

Remarks:

4. Are photographs, films, tapes, slides, and microform containing "For Official Use Only" information so marked "For Official Use Only" to ensure recipient or viewer is aware of the information therein?

Response: ___ Yes ___ No ___ NA ___

Remarks:

5. Is "For Official Use Only" material transmitted outside the Department of the Army properly marked "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption ___ applies"?

Response: ___ Yes ___ No ___ NA ___

Remarks:

6. Are permanently bound volumes of "For Official Use Only" information so marked on the outside of the front and back covers, title page, and first and last pages?

Response: ___ Yes ___ No ___ NA ___

Remarks:

7. Is DA Label 87 (For Official Use Only Cover Sheet) affixed to "For Official Use Only" documents when removed from a file cabinet?

Response: ___ Yes ___ No ___ NA ___

Remarks:

8. Do electrically transmitted messages contain the abbreviation "FOUO" before the beginning of the text?

Response: ___ Yes ___ No ___ NA ___

Remarks:

9. Are "For Official Use Only" records stored properly during nonduty hours?

Response: ___ Yes ___ No ___ NA ___

Remarks:

10. Are FOIA records maintained and disposed of in accordance with AR 25-400-2,

The Modern Army Recordkeeping System (MARKS)?

Response: ___ Yes ___ No ___ NA ___

Remarks:

1. Explain rationale for YES responses or provide cross-reference where rationale can be found. For NO responses, cross-reference to where corrective action plans can be found. If response is NA, explain rationale.

I attest that the above-listed internal controls provide reasonable assurance that Army resources are adequately safeguarded. I am satisfied that if the above controls are fully operational, the internal controls for this subtask throughout the Army are adequate.

Director of Information Systems for Command, Control, Communications, and Computers

FUNCTIONAL PROPONENT

I have reviewed this subtask within my organization and have supplemented the prescribed internal control review checklist when warranted by unique environmental circumstances. The controls prescribed in this checklist, as amended, are in place and operational for my organization (except for the weaknesses described in the attached plan, which includes schedules for correcting the weaknesses).

OPERATING MANAGER (Signature)

Kenneth L. Denton,

Alternate Army Liaison Officer with the Federal Register.

[FR Doc. 90-6294 Filed 3-22-90; 8:45 am]

BILLING CODE 3710-08-M

The American Medical Association, 535 North Dearborn Street, Chicago, Ill., Jan. 1, 1914.

Dear Sir:

I have the honor to acknowledge the receipt of your letter of the 28th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Yours,
J. C. Thompson, Secretary.

The American Medical Association, 535 North Dearborn Street, Chicago, Ill., Jan. 1, 1914.

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I am, Sir, very respectfully,
Yours,
J. C. Thompson, Secretary.

Postcard

Friday
March 23, 1990

Part III

Department of Education

**Indian Vocational Education Program;
Invitation of Applications for New
Awards Fiscal Year 1991; Notice**

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

[CFDA No: 84.101]

Indian Vocational Education Program; Invitation of Applications for New Awards Fiscal Year (FY) 1991

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide financial assistance to Indian tribes to plan, conduct, and administer projects, or portions of projects, that are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

Eligible Applicants: The tribal organization of any Indian tribe which is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

Deadline for Transmittal of Applications: July 16, 1990.

Available Funds: \$7,313,840.

Estimated Range of Awards: \$50,000 to \$500,000.

Estimated Average Size of Awards: \$292,553.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR, part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department of Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) The regulations for this program in 34 CFR part 410.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100

points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the 15 points reserved in 34 CFR 410.30(d) as follows: 5 points to the Selection criterion (a)—Need—in 34 CFR 410.31(a) for a total of 20 points for that criterion; 5 points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 410.31(b) for a total of 25 points for that criterion; and 5 points to the Selection Criterion (e)—Evaluation Plan—in 34 CFR 410.31(e) for a total of 10 points for that criterion.

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed activity;

(ii) Information which shows how the need will be met; and

(iii) Ongoing and planned activities in the community which pertain to the need, where appropriate.

(b) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(h) *Employment opportunities.* (10 points)

(1) The Secretary looks for information and documentation of the extent to which, upon the completion of their training under this program, more than 65 percent of the trainees will be employed in jobs related to their training, (including military specialties) or will be pursuing additional training related to their training under this program.

(2) Information which shows that this employment is related to the tribal economic development plan.

(Approved by OMB Control No. 1830-0013)

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention:
(CFDA #84.101), Washington, DC
20202-4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention:
(CFDA #84.101), Room #3633,
Regional Office Building #3, 7th and D
Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the

date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732-2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:
The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS-008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009) and instructions.

Note: ED Form GCS-009 is intended for the use of grantees and should not be transmitted to the Department.

One or both of the following, as appropriate:

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80-0004).

Certification Regarding Lobbying for Grants and Cooperative Agreements (ED 80-0008).

Note: This form is required if requesting, making, or entering into a grant or cooperative agreement for more than \$100,000.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact:
Harvey Thiel or Karen Suagee, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary E. Switzer Building), Washington, DC. 20202-7242. Telephone (202) 732-2380 or 732-2379.

Program Authority: 20 U.S.C. 2313.

Dated: March 12, 1990.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

Previous Editions Not Usable

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs**SECTION A — BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY					Total (5)
	(1)	(2)	(3)	(4)	(5)	
a. Personnel	\$	\$	\$	\$	\$	\$
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
13. Federal				
14. Non-Federal				
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

PART II -- BUDGET INFORMATION

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from the Indian Vocational Education program. Sections A and B should provide the budget for the first year of the project and Section E should present the need for Federal assistance in subsequent years.

(Note: Section D need not be completed to apply for these programs.) All application should contain a breakdown by the object class categories shown in Section B, Lines 6a through 6j.

Section A. Budget Summary

Line 1, Columns (a) through (g) -- Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project, as appropriate.

Section B. Budget Categories

Line 6a through 6i -- Fill in the total requirements for Federal funds by object class categories for the first year of the project.

Line 6a -- Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b -- Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect

cost rate.

Line 6c -- Travel: Indicate the amount requested for travel of employee.

Line 6d -- Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of \$5,000 or more per unit.

Line 6e -- Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than \$5,000 per unit with a useful life of less than two years.

Line 6f -- Contractual: Show the amount to be used for: (a) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g -- Construction: Construction expenses are allowable under the Vocational Education Indian Program (CFDA No. 84.101).

Line 6h -- Other: Indicate all direct costs not clearly covered by lines 6a through 6g. If there are trainee costs or stipends, enter the total cost of these expenses. The maximum allowance for stipends may be the larger of either the minimum wage prescribed by State or local law or the minimum hourly wage set by the Fair Labor Standards Act.

Line 6i -- Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j -- Show the amount of indirect cost to be charged to the project.

(Note: Except for grants to Federally recognized Indian tribes, the indirect cost rate for training projects cannot exceed eight percent of total direct charges.)

Line 6k -- Enter the total of the amounts on Lines 6i and 6j.

Section E -- Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16 -- Enter in Column (a) the catalog program title. In Columns (b) and (c), as appropriate, enter the amounts of Federal funds which will be needed to complete the project over the succeeding funding period(s) (usually in years).

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in Section A, B, and E.

Part III -- Application Narrative

Instructions for Part III -- Application Narrative

All applicants are urged to submit Application Narratives which are concise and clearly written. Before preparing the Application Narrative, applicants should read and become familiar with the law and the regulations covering the program to which they are applying.

Applicants should use the selection criteria for a program as an outline for preparing their Application Narrative, addressing the selection criteria in the order the criteria are listed. Applicants are encouraged to provide a table of contents and to number the pages of the Application Narrative. The Application Narrative should not exceed 25 double-spaced typed pages, (on one side only). Supporting documentation (e.g., letters of support, footnotes, resumes, etc.) may be submitted as appendices to the Application Narrative.

Applicants are advised that:

- (1) Under Section 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.
- (2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application

only insofar as they contain commitments which pertain to the established technical review criteria, such as commitment of resources and placement of successful completers.

ESTIMATED PUBLIC REPORTING BURDEN

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden for this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Paperwork Reduction Project, OMB control number: 1830-0013, Office of Management and Budget, Washington, D.C. 20503. (Information collection approved under OMB Control Number 1830-0013. Expiration date: 3/31/91).

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 *Federal Register*, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about--
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Certification Regarding Drug-Free Workplace Requirements

Grantees Who Are Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that their conduct of grant activity will be drug-free. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Organization Name (As Appropriate)

PR/Award Number or Project Name

Printed Name

Signature

Date

**Certification Regarding Lobbying For
Grants and Cooperative Agreements**

Submission of this certification is required by Section 1352, Title 31 of the U.S. Code and is a prerequisite for making or entering into a grant or cooperative agreement over \$100,000.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact on which the Department of Education relied when it made or entered into this grant or cooperative agreement. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

PR/Award (or Application) Number
or Project Name

Name and Title of Authorized Representative

Signature

Date

ED 80-0008

12/89

DISCLOSURE OF LOBBYING ACTIVITIESApproved by OMB
0348-0046Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____
6. Federal Department/Agency: _____		7. Federal Program Name/Description: CFDA Number, if applicable: _____
8. Federal Action Number, if known: _____		9. Award Amount, if known: \$ _____
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): _____ _____ _____		b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____ _____ _____
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned		13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____ _____ _____		
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES **CONTINUATION SHEET**

Approved by OMB
0346-0046

Reporting Entity: _____

Page _____ of _____

Federal Register

Friday
March 23, 1990

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 184

Direct Food Substances Affirmed as
Generally Recognized as Safe; Chymosin
Enzyme Preparation Derived From
Escherichia Coli K-12; Final Rule

Pfizer Central Research, Pfizer, Inc.;
Withdrawal of Food Additive Petition;
Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket Nos. 87G-0418 and 87F-0416]

Direct Food Substances Affirmed as Generally Recognized as Safe; Chymosin Enzyme Preparation Derived From *Escherichia coli* K-12

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that the use of chymosin preparation derived by fermentation from *Escherichia coli* K-12 is generally recognized as safe (GRAS). This action is in response to a petition filed by Pfizer Central Research, Pfizer, Inc.

EFFECTIVE DATE: March 23, 1990. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) of a certain publication in 21 CFR 184.1685(b) effective on March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Eric L. Flamm, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), Pfizer Central Research (Pfizer) submitted a petition (GRASP 8G0337) requesting that its chymosin preparation (referred to as "chymosin" in the petition's filing notice that FDA published in the Federal Register of February 9, 1988 (53 FR 3792)), which is derived from the fermentation of a genetically modified *E. coli* K-12, be affirmed as GRAS as a direct human food ingredient. Chymosin is the principal enzyme in rennet, a GRAS food ingredient used for its milk-clotting activity, and is primarily responsible for that activity. Chymosin preparation is intended for use as a substitute for rennet.

To avoid confusion between chymosin the enzyme and chymosin the enzyme preparation (in which chymosin is the principal active component but which may also contain impurities), this document will henceforth use the term "chymosin" when referring to the enzyme and "chymosin preparation" when referring to the fermentation-derived chymosin enzyme preparation.

Pfizer submitted two petitions concerning chymosin preparation. In addition to GRASP 8G0337, it submitted a petition (FAP 8A4048) requesting that the food additive regulations be amended to provide for the safe use of genetically modified *E. coli* K-12 as a source of chymosin preparation (referred to as "chymosin" in the petition's filing notice that FDA published in the Federal Register of February 9, 1988 (53 FR 3792)), for use in food. The regulation that is the subject of this final rule is in response to the GRAS affirmation petition. Published elsewhere in this issue of the Federal Register is a document (Docket No. 87F-0416) announcing that Pfizer has withdrawn its food additive petition without prejudice to a future filing.

FDA gave interested parties an opportunity to submit comments concerning the GRAS affirmation petition to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. FDA received two comments in response to the notice. Both comments address whether the dairy industry needs new sources of chymosin. Neither comment contains any information relevant to the safety, functionality, environmental impact, or GRAS status of the food use of the subject chymosin preparation. Thus, the comments are not relevant to the agency's evaluation of chymosin preparation. FDA's authority in reviewing food additive and GRAS affirmation petitions is limited to questions about the safety and functionality of the substance at issue and does not include questions about the need for a new food ingredient (21 U.S.C. 348).

II. Standards for GRAS Affirmation

Pursuant to § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances. The basis of such views may be either (1) scientific procedures or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). In its petition, Pfizer has relied upon scientific procedures to

establish that chymosin preparation is GRAS.

Rennet is an animal-derived enzyme preparation that is GRAS as specified in § 184.1685 (21 CFR 184.1685). Therefore, if published information shows that the principal active component of chymosin preparation is the same as that of rennet, and that the other components (i.e., impurities) of the chymosin preparation, which may differ from the other components (i.e., impurities) of rennet, do not render the use of the substance unsafe, then chymosin preparation derived from *E. coli* would present no more safety concern than rennet. If this is the case, FDA can affirm chymosin preparation derived from *E. coli* as GRAS for use as a replacement for rennet.

III. Safety

A. Introduction

Chymosin, also known as rennin, is the principal milk-clotting enzyme present in rennet (Ref. 1). Rennet is an enzyme preparation that will clot milk, forming it into curds and whey (Refs. 1 and 2). It is used to make cheese and other dairy products. It has a long and extensive history of safe use in food and has been affirmed by FDA as GRAS in § 184.1685 (48 FR 51151; November 7, 1983).

Food-grade rennet is an enzyme preparation that is derived from the fourth stomach of calves, kids, or lambs. Commercially, it is generally derived from unweaned calves by aqueous extraction. The aqueous extraction step is followed by purification steps and an acidification step to cleave prochymosin (the inactive precursor of chymosin) in the rennet into chymosin (Ref. 1).

There are two predominant forms of calf chymosin, chymosin A and chymosin B (Ref. 1). Foltmann et al. have shown that chymosin A and chymosin B differ by a single amino acid (Ref. 3). In this document FDA is using the terms "chymosin" to refer to either, or both, chymosin A and chymosin B.

Techniques developed in the last 15 years (frequently termed "recombinant DNA technology" or "cloning techniques") enable scientists to locate and to obtain a segment of deoxyribonucleic acid (DNA) containing a gene of interest. They are able to move that DNA segment into a vector (a self-replicating DNA molecule that is easy to manipulate) and then introduce it into a new host organism where it can be correctly expressed (that is, produce the protein that it would produce in the original organism). These techniques are

well-known to molecular biologists (see e.g., Refs. 4 and 5).

B. The Chymosin Component

Using cloning techniques, scientists in a number of different laboratories have identified the gene in the calf from which the chymosin in rennet is produced, the prochymosin gene (Refs. 6 through 8). Scientists have moved the calf prochymosin gene into *E. coli* (Refs. 6 through 10) as well as into other microorganisms (Refs. 11 through 13).

They have used a variety of techniques to demonstrate that they have cloned full-length copies of the correct gene. Such techniques include: (1) DNA sequencing, whereby the cloned putative prochymosin gene was shown to have the nucleotide sequence that encodes the amino acid sequence of prochymosin (Refs. 6 through 8); (2) nucleic acid hybridization, whereby the cloned DNA fragments or the ribonucleic acid (RNA) molecules made from the DNA fragments were shown to hybridize (i.e., specifically bind) with complementary DNA in the prochymosin gene (Refs. 7 through 12); and (3) physical mapping, whereby the cloned DNA fragments were shown to be large enough to contain the prochymosin gene and, when digested with appropriate DNA-cutting enzymes and run on gels that separate DNA fragments by size, were shown to yield the pattern of DNA fragments expected for prochymosin (Refs. 7 through 13).

The published evidence establishes that the new host organisms are able to use the prochymosin gene to produce prochymosin that has the same molecular weight as prochymosin found in calf rennet (Refs. 9 through 11 and 13 through 15). It also establishes that the prochymosin that is produced (cloned prochymosin) can be cleaved into chymosin (cloned chymosin) that has the same molecular weight and the same functional activity as chymosin found in calf rennet (Refs. 9, 10, and 12 through 15).

The molecular weights of prochymosin and chymosin were assayed using sodium dodecyl sulfate-polyacrylamide gel electrophoresis, a technique that enables one to determine the comparative molecular weight of proteins based on their rate of migration through the gel. Cloned prochymosin was found to migrate through these gels at the same rate as the prochymosin derived from calves (Refs. 9 through 11 and 13 through 15). Cloned chymosin was found to migrate through these gels at the same rate as the chymosin found in rennet (Refs. 9, 10, and 12 through 15).

The functional activity of chymosin that was measured was milk-clotting

activity. Cloned chymosin was found to clot milk at the same rate as the chymosin in rennet under various temperatures, salt concentrations, and pH conditions (Refs. 9 through 15).

One safety concern raised by cloning is whether extraneous DNA, particularly DNA flanking the gene of interest, that could potentially encode extraneous harmful proteins may be cloned along with the gene of interest (i.e., prochymosin). However, the regulation stipulates that the substance being affirmed as GRAS is one that is produced using a production strain that is nontoxicogenic (see § 184.1685(a)(2)). If the cloned DNA encodes a harmful substance that could render the enzyme preparation unsafe, the production strain would be toxicogenic, and the substance produced would not be GRAS under § 184.1685(a)(2). Therefore, the agency finds that there is no basis for concern that the safety of the chymosin preparation will be compromised by contaminating proteins encoded by extraneous uncharacterized DNA cloned along with the prochymosin gene.

FDA notes that as a matter of good manufacturing practice, manufacturers using recombinant DNA technology should assure themselves that they have not inadvertently cloned extraneous protein-encoding DNA along with the prochymosin gene. Such assurance can come from reviewing the details of the cloning steps, such as the origin and sequence of the DNA fragments used in the cloning, and from full characterization of the final genetic constructs via techniques such as DNA sequencing. The agency points out that Pfizer's petition contains information demonstrating that it conducted these steps.

Based on the fact that published information demonstrates that chymosin produced from the cloned prochymosin gene has the same molecular weight and the same functional activity as the chymosin derived from calves, FDA concludes that the chymosin enzyme in chymosin preparation is the same as the chymosin enzyme in calf rennet. Therefore, FDA concludes that the chymosin enzyme in chymosin preparation is as safe as the chymosin enzyme in rennet.

C. Sources of Impurities

Enzyme preparations used in food-processing are usually not chemically pure but contain extraneous source (cellular) and processing material. The nature and amounts of these impurities in the finished enzyme preparation depend on the organism from which the enzyme is produced (the source or production organism), the fermentation

materials and methods used to grow the production organism, and the materials and methods used to generate the finished enzyme preparation.

Both the source material and the manufacturing methods for producing chymosin preparation differ from those used to produce animal rennet. Therefore, the impurities in chymosin preparation will differ from those in rennet. The question thus is whether the source material or manufacturing methods for chymosin preparation will introduce impurities that would raise concerns about the safety of the preparation.

1. Processing steps

Researchers in a number of laboratories have published papers containing descriptions of methods that they used for producing chymosin preparation from microorganisms containing the calf prochymosin gene (e.g., Refs. 9 through 15). The methods described in these publications and in Pfizer's petition do not differ from each other in any significant way. The key steps in the methods, as described by Marston et al. (Ref. 15) and by Pfizer, are summarized below.

E. coli is grown in a liquid nutrient medium, then pelleted by centrifugation. The pelleted cells are resuspended in a small volume of buffer and burst open, releasing the prochymosin in the form of densely packed insoluble aggregates. The aggregates are recovered by a second centrifugation step, while most of the rest of the cellular protein and debris remain in suspension. The prochymosin is thus rapidly purified from the bulk of cellular material. Pfizer treats the aggregates with acid to kill residual cells and to degrade residual DNA. The prochymosin aggregates are solubilized by denaturation in an alkaline urea solution. The prochymosin is renatured by decreasing the alkalinity and diluting out the urea and further purified by ion-exchange chromatography. The prochymosin is converted to chymosin, the active form of the enzyme, by suspension in a pH 2 acid solution for an hour. The final chymosin preparation is a clear solution.

FDA finds that the manufacturing method does not require the use of any processing materials that are not GRAS or approved food additives. Accordingly, it is specifying in the regulation that the substance being affirmed as GRAS is one that is produced using only processing materials that are GRAS substances or food additives approved for use in this type of process (see § 184.1685(a)(2)). Therefore, the agency concludes that the

manufacturing steps will not introduce impurities into the enzyme preparation that will adversely affect the safety of the preparation.

2. Production organism

The source material for the chymosin in chymosin preparation is *E. coli* K-12. *E. coli*'s natural habitat is the large intestine of humans and animals, where it is found at 1 million to 100 million organisms per gram of intestinal contents (Ref. 16). *E. coli* K-12 is a laboratory strain that, through longtime propagation in the laboratory, has lost a number of the traits necessary for colonization of, and therefore survival in, the intestinal tract (Ref. 17).

E. coli K-12 is one of biology's most extensively studied microorganisms. It has been shown to be nonpathogenic and nontoxic in studies in which it has been fed to humans and laboratory animals (see, e.g., Refs. 16 and 17) and in detailed studies of its phenotypic and genotypic traits (see, e.g., Refs. 16 through 18). For example, Gorbach (Ref. 16), Curtiss (Ref. 17), and Smith (Ref. 18) have reported their own and others' failed attempts to implant *E. coli* K-12 in the human intestine, an initial step for pathogenicity. In none of the experiments were researchers able to isolate the strain from the feces of volunteers 1 to 6 days after they were fed high doses (10^9 - 10^{10} live organisms) of various strains of *E. coli* K-12. In none of the experiments did the volunteers become sick as a result of their ingestion of the organisms.

Gorbach (Ref. 16) discussed six factors necessary for an organism to be pathogenic: (1) Survival in the environment, (2) a mechanism for penetrating the skin or mucosal surface, (3) multiplication within the host, (4) systemic spread within the host, (5) resistance to host defense mechanisms, and (6) production of a toxin or some other mechanism to damage the host to produce disease symptoms. He noted that a lack of any one of these characteristics will render the microorganism nonpathogenic, and that, based on the available evidence, *E. coli* K-12 is deficient in every one of these factors (Ref. 16). Gorbach also noted that in the 30 years that *E. coli* K-12 has been used in genetics research, there have been no reported cases of laboratory-acquired infections from this organism (Ref. 16).

As corroborative evidence of the safety of chymosin preparation, Pfizer submitted two unpublished short-term in vivo studies conducted on its enzyme preparation, a 5-day feeding study in dogs and a 1-month gavage study in rats (Ref. 19). No adverse effects were

observed in these studies at any dose fed.

Some *E. coli* K-12 strains, such as those that are used by Pfizer and others (e.g., Refs. 9, 10, and 14) to produce chymosin preparation, do contain marker genes that encode resistance to clinically useful antibiotics. Such genes potentially could be transferred to other microorganisms with which the production strain or its DNA comes into contact. However, as previously described, the isolation of the enzyme as an intracellular insoluble aggregate results in the destruction of the microorganism and in the elimination of most cellular material, including these marker genes (Ref. 15). Additionally, the two acid treatment steps in the manufacturing process inactivate residual cells and degrade residual DNA, including marker genes, that remain in the enzyme preparation (Ref. 20).

As corroborative evidence that the enzyme preparation does not contain gene-size DNA fragments or transformable DNA (that is, DNA that a microorganism can take up from its surroundings and functionally incorporate into its own DNA), Pfizer submitted data from several unpublished experiments, including a gel electrophoresis/DNA hybridization assay and a transformation assay. In the electrophoresis experiment, DNA fragments were sized based on their differential rates of migration through the gel and quantitated based on their level of hybridization with labeled complementary DNA. No DNA fragments large enough to contain an intact gene encoding antibiotic resistance were detected in the enzyme preparation (Ref. 19).

In the transformation assay, bacterial cells were mixed with DNA under optimized conditions and assayed to see if they had picked up the antibiotic resistance encoded by the DNA. Cells mixed with the enzyme preparation did not become antibiotic resistant (Ref. 19).

Based on the above discussion, FDA concludes that chymosin preparation manufactured in conformity with § 184.1685(a)(2) will not contain DNA encoding resistance to antibiotics at levels that would provide any safety concern. FDA concludes that *E. coli* K-12 is safe for use as a source of food-grade chymosin preparations, and that impurities resulting from its use in the production of chymosin preparation will not affect the safety of the chymosin preparation.

IV. Specifications

The agency finds that, because the principal active ingredient of chymosin

preparation and rennet are the same, and because the impurities in chymosin preparation do not provide any basis for concern that the use of the preparation may not be safe, the general and additional requirements given for rennet and other enzyme preparations in the "Food Chemicals Codex," 3d Ed. (1981), pp. 107-110, are adequate for defining minimum criteria for a food-grade chymosin preparation derived from *E. coli* K-12. FDA is amending § 184.1685(b) to reference pp. 109 and 110 of the "Food Chemicals Codex," 3d Ed. (1981), as well as pp. 107 and 108.

V. Conclusions

The agency has evaluated all available information and finds, based upon the published and corroborative evidence discussed above, that the active principal ingredient in the chymosin preparation is the same as that in rennet, and that when the preparation is manufactured in accordance with § 184.1685(a)(2), the source organism and manufacturing process will not introduce impurities into the preparation that would provide a basis for concern that the use of the preparation may not be safe. Therefore, the agency concludes, based upon scientific procedures, that the chymosin preparation derived by fermentation from *E. coli* K-12 and described in the regulation below is GRAS for use as a replacement for rennet.

VI. Environmental Effects

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above).

VII. Economic Effects

FDA, in accordance with the Regulatory Flexibility Act, has considered the effects that this regulation would have on small entities, including small businesses, and has determined that the effect of this regulation is to provide for the use of fermentation-derived chymosin for both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, the agency has analyzed the economic effects of this final rule and has determined that this rule will not be a major rule as defined by that Order.

The agency's finding of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Foltmann, B., "Prochymosin and Chymosin (Prorennin and Rennin)," *Methods in Enzymology*, 19:421-436, 1970.
2. Burgess, K., and M. Shaw, "Dairy," in *Industrial Enzymology*, T. Godfrey and J. Reichelt, eds., The Nature Press, New York, pp. 260-265, 1983.
3. Foltmann, B. et al., "The Primary Structure of Calf Chymosin," *Journal of Biological Chemistry*, 254:8447-8456, 1979.
4. Watson, J.D. et al., "Molecular Biology of the Gene," Benjamin/Cummings Publishing Co., Inc., Menlo Park, CA, pp. 65-94, 202-213, 1987.
5. Murray, K., "Genetic Engineering and its Applications," in *Basic Biotechnology*, J. D. Bu'Lock and B. Kristiansen, eds., Academic Press, London, pp. 483-508, 1987.
6. Harris, T. J. R. et al., "Molecular Cloning and Nucleotide Sequence of cDNA Coding for Calf Preprochymosin," *Nucleic Acids Research*, 10:2177-2187, 1982.
7. Hidaka, M. et al., "Cloning and Structural Analysis of the Calf Prochymosin Gene," *Gene*, 43:197-203, 1986.
8. Moir, D. et al., "Molecular Cloning and Characterization of Double-stranded cDNA Coding for Bovine Chymosin," *Gene*, 19:127-138, 1982.
9. Emtage, J.S. et al., "Synthesis of Calf Prochymosin (Prorennin) in *Escherichia coli*," *Proceedings of the National Academy of Sciences*, 80:3671-3675, 1983.
10. McCaman, M.T., W.H. Andrews, and J.G. Files, "Enzymatic Properties and Processing of Bovine Prochymosin Synthesized in *Escherichia coli*," *Journal of Biotechnology*, 2:177-190, 1985.
11. Goff, C.G. et al., "Expression of Calf Prochymosin in *Saccharomyces cerevisiae*," *Gene*, 27:35-48, 1984.
12. Cullen, D. et al., "Controlled Expression and Secretion of Bovine Chymosin in *Aspergillus nidulans*," *Bio/Technology*, 5:369-376, 1987.

13. Mellor, J. et al., "Efficient Synthesis of Enzymatically Active Calf Chymosin in *Saccharomyces cerevisiae*," *Gene*, 24:1-14, 1983.
14. Kawaguchi, Y. et al., "Production of Chymosin in *Escherichia coli* Cells and its Enzymatic Properties," *Agricultural and Biological Chemistry*, 51:1871-1877, 1987.
15. Marston, F.A.O. et al., "Purification of Calf Prochymosin (Prorennin) in *Escherichia coli*," *Bio/Technology*, 2:800-804, 1984.
16. Corbach, S.L., "Recombinant DNA: An Infectious Disease Perspective," *Journal of Infectious Diseases*, 137:815-823, 1978.
17. Curtiss, R., "Biological Containment and Cloning Vector Transmissibility," *Journal of Infectious Diseases*, 137:668-675, 1978.
18. Smith, H.W., "Is It Safe to Use *Escherichia coli* K-12 in Recombinant DNA Experiments?," *Journal of Infectious Diseases*, 137:655-660, 1978.
19. Petition 8C0337.
20. Lehninger, A.L., "Biochemistry," Worth Publishers, New York, p. 256, 1970.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 184.1685 is revised to read as follows:

§ 184.1685 Rennet (animal-derived) and chymosin preparation (fermentation-derived).

(a) (1) Rennet and bovine rennet are commercial extracts containing the active enzyme rennin (CAS Reg. No. 9001-98-3), also known as chymosin (International Union of Biochemistry Enzyme Commission (E.C.) 3.4.23.4). Rennet is the aqueous extract prepared from cleaned, frozen, salted, or dried fourth stomachs (abomasas) of calves, kids, or lambs. Bovine rennet is the product from adults of the animals listed above. Both products are called rennet and are clear amber to dark brown liquid preparations or white to tan powders.

(2) Chymosin preparation is a clear solution containing the active enzyme chymosin (E.C. 3.4.23.4). It is derived, via fermentation, from a nonpathogenic and nontoxic strain of *Escherichia coli* K-12 containing the prochymosin gene. The prochymosin is isolated as an insoluble aggregate that is acid-treated to destroy residual cellular material and, after solubilization, is acid-treated to form chymosin. It must be processed with materials that are generally recognized as safe, or are food additives that have been approved by the Food and Drug Administration for this use.

(b) Rennet and chymosin preparation meet the general and additional requirements for enzyme preparations of the "Food Chemicals Codex," 3d Ed. (1981), pp. 107-110, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or are available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter; a processing aid as defined in § 170.3(o)(24) of this chapter; and a stabilizer and thickener as defined in § 170.3(o)(28) of this chapter.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: In cheeses as defined in § 170.3(n)(5) of this chapter; frozen dairy desserts and mixes as defined in § 170.3(n)(20) of this chapter; gelatins, puddings, and fillings as defined in § 170.3(n)(22) of this chapter; and milk products as defined in § 170.3(n)(31) of this chapter.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: March 14, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-6600 Filed 3-22-90; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Food and Drug Administration**

[Docket No. 87F-0416]

**Pfizer Central Research, Pfizer, Inc.;
Withdrawal of Food Additive Petition**

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a petition (FAP 8A4048) proposing that the food additive regulations be amended to provide for the safe use of a genetically modified

Escherichia coli K-12 (*E. coli* K-12) as a source of chymosin for use in food.

FOR FURTHER INFORMATION CONTACT:

Eric L. Flamm, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 9, 1988 (53 FR 3792), FDA published a notice that it had filed a petition (FAP 8A4048) from Pfizer Central Research, Pfizer, Inc., 235 East 42d St., New York, NY 10017, that proposed to amend the food additive regulations to provide for the safe use of a genetically modified *E. coli* K-12 as a source of prochymosin.

The prochymosin preparation obtained by fermentation of the modified *E. coli* K-12 is processed to yield chymosin for use in food. Pfizer Central Research, Pfizer, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7). Published elsewhere in this issue of the Federal Register is a final rule (Docket No. 87G-0418) affirming that the use of chymosin preparation derived from *E. coli* K-12 is generally recognized as safe.

Dated: March 14, 1990.

Alan L. Hoeting,

*Acting Associate Commissioner for
Regulatory Affairs.*

[FR Doc. 90-6599 Filed 3-22-90; 8:45 am]

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Friday
March 23, 1990

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405 et al.

Medicare and Medicaid Programs; Nurse
Aide Training and Competency Evaluation
Programs and Preadmission Screening
and Annual Resident Review; Proposed
Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 433 and 483

RIN 0938-AE50

[BPD-662-P]

Medicare and Medicaid Programs; Nurse Aide Training and Competency Evaluation Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes Federal requirements that States have competency evaluation programs and training and competency evaluation programs for nurse aides employed by Medicare and Medicaid participating nursing facilities and also have a nurse aide registry.

The purpose of these provisions is to ensure that nurse aides have the education, practical knowledge, and skills needed to care for residents of nursing facilities. These requirements would implement, in part, sections 4201(a) and 4211(a) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) and section 6901(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89).

DATES: To assure consideration, comments must be submitted to the appropriate address, as provided below, and should be received no later than 5:00 p.m. on May 22, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-662-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-662-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday

through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder, (301) 966-4620.

SUPPLEMENTARY INFORMATION:

I. Background

Overview

Facilities under the Medicare and Medicaid programs can be any of several different facilities providing a wide variation of patient care services. A nursing facility that is a Medicare skilled nursing facility (SNF) is primarily engaged in providing skilled nursing care and related services or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

A nursing facility under the Medicaid program is an institution or distinct part of an institution that is primarily engaged in providing skilled nursing care and related services; rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or on a regular basis, health-related care and services above the level of room and board, to individuals who, because of their mental or physical condition, require care and services that are only available through an institution.

Nursing facilities participating in the Medicare and Medicaid programs agree to comply with the requirements included in our regulations at 42 CFR parts 405 and 442. Extensive revisions to those rules at 42 CFR part 483 become effective October 1, 1990, as discussed below.

Compliance with the requirements is assessed by means of an onsite survey, usually performed by a State survey agency, that measures adherence to Federally established guidelines.

Requirements for Long Term Care Facilities

On February 2, 1989, we published in the *Federal Register* (54 FR 5316) final regulations with a comment period which specified new and revised requirements that long-term care facilities (SNFs and intermediate care facilities (ICFs), both of which, effective October 1, 1990, will be considered nursing facilities (NFs) under Medicaid and SNFs under Medicare) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients. We issued the regulations following a notice of proposed rulemaking (NPRM) to refocus the requirements for participation in both programs to actual facility performance in meeting residents' needs in a safe and healthful environment. The previous set of

requirements had focused on the capacity of the facility to provide appropriate care. In addition, we needed to simplify Federal enforcement procedures by using a single set of requirements that apply to all activities common to SNFs, ICFs, and NFs.

Many of the requirements in the February 2 regulations included detailed, self-implementing provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100-203). OBRA '87 was enacted after we issued the NPRM for the final regulations. An effective date of August 1, 1989 was specified for the regulations, except for those requirements that require a later effective date.

The revision of the nursing home regulations was the most extensive set of Federal regulatory changes in this area of the health care industry in 15 years. Because of these major revisions, we had to rewrite significantly the survey guidelines for conducting inspections of nursing homes, and we have had to conduct extensive training of individuals who will conduct the inspections to determine facility compliance with Federal requirements.

On July 14, 1989 we published a rule in the *Federal Register* (54 FR 29717) announcing that we believed it would be beneficial to all affected parties, including beneficiaries and recipients, to delay the effective date of the regulations until January 1, 1990. This delay was intended to allow opportunity for further improvement of surveyor skills and allow facilities additional lead time to become more familiar with these requirements and to make needed changes. In the long run, the delay was expected to enhance the quality of care provided to residents of the facilities and our ability to measure accurately and uniformly that quality among participating facilities.

Therefore, we changed the effective date of the February 2 regulations to January 1, 1990. Those parts of the regulations that are to be effective on October 1, 1990, were unaffected by this change.

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101-239) was enacted. Section 6901(a) of OBRA '89 further delays the effective date of the February 2, 1989 regulations to October 1, 1990, and we confirmed this in a final rule on December 29, 1989, 54 FR 53611. The statutory delay in the effective date of our substantial revision of nursing home requirements presents us with a paradox: the legislation and the provisions of this proposal concern, in part, proposed modifications to

regulations that presently are not in effect. We intend to deal with this paradox in two ways. First, we are proposing, where necessary, to modify the text of the February 2, 1989 rule. We are doing this because the OBRA '87 requirements concerning nurse aide training and registry were codified by the February 2, 1989 rule and are not otherwise a part of the Code of Federal Regulations. Second, we anticipate that the effective date of this proposal would not be before October 1, 1990, the effective date of the February 2, 1989 rule.

II. Proposed Rule

Nurse Aide Training and Competency Evaluation

Prior to the enactment of OBRA '87, there were no Federal requirements concerning training and competency evaluation of nurse aides. Rather, conditions for Medicare at § 405.1121(h) and for Medicaid at § 442.314 required all staff be suitably and appropriately trained. New sections 1819(e)(1), 1819(f)(2), 1919(e)(1) and 1919(f)(2) of the Social Security Act (the Act), added by OBRA '87, require the Secretary to establish standards for training and competency of nurse aides and authorize States to grant approvals of competency evaluation programs and training and competency evaluation programs only in accordance with those standards. Sections 1819(e)(1) and 1919(e)(1) of the Act require that the State review and approve nurse aide competency evaluation programs and training and competency evaluation programs. Some of the provisions of OBRA '87 have been modified by OBRA '89; these proposed regulations reflect the modifications.

To implement the OBRA '87 provisions, we would amend Part 431, State Organization and General Administration, to add a new § 431.120, State requirements with respect to nursing facilities. We would require that the State plan provide that the requirements under a new subpart D of part 483 (discussed below) are met. That subpart would contain requirements for States and State agencies concerning nurse aide training and competency evaluation. The State plan must specify the rules and procedures the State follows in carrying out the requirements, including review and approval of State-operated programs and interagency agreements where the State delegates responsibilities to other agencies. We would cite sections 1919 (e)(1) and (e)(2) as the basis of these requirements.

Section 6901(b)(5) of OBRA '89 amended section 1903(a)(2)(B) of the Act

to clarify that temporary enhanced funding is available for nurse aide competency evaluation programs and training and competency evaluation programs. We would implement this section in new § 433.15(b)(8) which indicates that Federal financial participation (FFP) for nurse aide competency evaluation programs and training and competency evaluation programs is available in the following amounts: for calendar quarters beginning on or after July 1, 1988 and before July 1, 1990, the lesser of 90 percent or the Federal medical assistance percentage (FMAP) plus 25 percentage points; for calendar quarters beginning after July 1, 1990, 50 percent.

In our February 2, 1989 rule we established a new § 483.75, Level A Requirement: Administration. We require that a facility be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Section 483.75(g), contains requirements for training of nurse aides that incorporated the training and competency evaluation requirements added by OBRA '87. (See 54 FR 5349) Nurse aides subject to the training and competency evaluation programs are defined in § 483.75(g)(6) as any individuals providing nursing or nursing-related services to residents in a facility, excluding volunteers who provide such services without pay. We would like to clarify that the definition of a nurse aide at § 483.75(g)(6) includes any person, regardless of job title or gender, who provides nursing or nursing-related services but is not a volunteer or a licensed health professional. For example, this definition could include orderlies and psychiatric technicians, depending on the services they provide to residents in the nursing facility. We noted that the OBRA '87 provisions are essentially self-executing due to their explicit requirements.

Section 6901 of OBRA '89 contains a number of provisions affecting the content of the February 2, 1989 rule. As noted earlier, section 6901(a) establishes that the rule not be effective before October 1, 1990, and we issued a regulation on December 29, 1989 to implement this requirement. Section 6901(b)(1) delays the effective date of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act from January 1, 1990 to October 1, 1990. These sections state that a facility must not use any individual working in a facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other

basis, unless that individual has completed a training and competency evaluation program or a competency evaluation program approved by the State, and that individual is competent to provide nursing and nursing related services.

Section 6901(b)(4) provides for a delay and a transition in the nurse aide training requirement. Section 6901(b)(1) also modifies sections 1819(b)(5)(B) and 1919(b)(5)(B) by delaying from January 1, 1990 to October 1, 1990 the date by which a facility must provide a competency evaluation program approved by the State and preparation necessary for completion of the evaluation for individuals used by the facility as of January 1, 1990 (delayed from July 1, 1989 by OBRA '89). We would revise the effective dates of § 483.75(g) to reflect the statutory changes. We would implement this provision in § 483.150, as discussed below, but would incorporate it by reference in § 483.75(g).

We also would amend Part 483, Requirements for States and Long Term Care Facilities, by redesignating existing subpart D, which concerns intermediate care facilities for the mentally retarded, as subpart I. We would then establish a new Subpart D entitled, Requirements That Must Be Met by States and States Agencies: Nurse Aide Training and Competency Evaluation. The subpart would include requirements that must be met by States in addition to those that must be met by the State Medicaid agency. The subpart includes State review and approval requirements, including curriculum requirements, and provides for a State registry of nurse aides.

Following is an explanation of our proposed requirements.

In new § 483.150, Role of States in nurse aide training, we would propose three exceptions to the requirement that all aides complete a training and competency evaluation program or competency evaluation program approved by the State. Specifically, we would incorporate the requirements of sections 6901(b)(4) (B), (C), and (D) of OBRA '89. Sections 6901(b)(4) (B) and (C) allow an individual to be considered to meet the requirements of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act (of completing a training and competency evaluation program approved by the State under sections 1819(e)(1)(A) or 1919(e)(1)(A) of the Act) if—

- The aide would have satisfied the requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for "75 hours" in

sections 1819(f)(2) and 1919(f)(2) of the Act, respectively, and if the aide had received, before July 1, 1989, at least the difference in the number of hours in the course and 75 hours in supervised practical nurse aide training or in regular in-service nurse aide education; or

- The aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

Section 6901(b)(4)(D) of OBRA '89 indicates that a State may waive the requirement for an individual to complete a competency evaluation program approved by the State if that individual can prove to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1989.

New § 483.151, State review and approval of nurse aide training and competency evaluation programs, contains requirements for: State review and administration; approval of programs not offered by the State; timely action on requests for approval; length of the approval period; and withdrawal of approval. In § 483.151(a), we propose to require that the State do either or both of the following:

- Offer a nurse aide training and competency evaluation program that meets the requirements of new § 483.152 (discussed below) and/or a competency evaluation program that meets the requirements of new § 483.154 (discussed below); or

- Specify nurse aide training and competency evaluation programs not offered by the State that the State approves as meeting the requirements of § 483.152 and/or competency evaluation programs not offered by the State that the State approves as meeting the requirements of § 483.154.

These requirements are necessary to implement sections 1819(e)(1) and 1919(e)(1) of the Act, which require States to specify nurse aide training and competency evaluation programs and competency evaluation programs that comply with requirements established by the Secretary. We would specify that a State may offer a nurse aide training and competency evaluation program or a competency evaluation program, or both, to clarify that the State may choose either option to meet the statutory requirement that it specify programs it approves as meeting the standards.

Under our proposal a State may subcontract or delegate the operation of

a program it offers, but the State would be required to review and approve programs against the requirements of these regulations and to determine if the requirements were met before approving a program or programs. The State may not delegate or subcontract the approval of nurse aide training and competency evaluation programs or nurse aide competency evaluation programs to an entity outside of the State government. A delegation or subcontract would be contrary to the requirement of sections 1819(e)(1) and 1919(e)(1), which require that these determinations be made by the State.

We propose that, if the State does not choose to offer one or both of the programs specified in this section, the State survey agency or another State government entity must review and approve or disapprove nurse aide training and competency evaluation programs and nurse aide competency evaluation programs when requested to do so by a Medicare participating skilled nursing facility or a Medicaid participating nursing facility. Sections 1819(b)(5) and 1919(b)(5) of the Act require a facility to use only nurse aides who have successfully completed a State approved nurse aide training and competency evaluation program or a State approved competency evaluation program. Since the facility is restricted to using nurse aides who have successfully completed a State approved program, the facility should be able to request the State to provide a judgment on a program about which the facility has a question if the State chooses to approve non-State nurse aide competency evaluation programs and training and competency evaluation programs.

We propose that the State survey agency, in the course of all surveys, determine whether the nurse aide training and competency evaluation requirements of § 483.75(g) are met. (We note that the effective date for § 483.75(g) has been delayed until October 1, 1990 by section 6901(a) of OBRA '89. We expect that our final revision of § 483.151(a)(4) would not be effective until that date.) Specifically, the State would be required, in the course of all surveys, to determine whether the facility used only nurse aides who had successfully completed a nurse aide competency evaluation program or a training and competency evaluation program approved by the State under this paragraph.

In § 483.151(b), we propose to require that before a State approves a nurse aide training and competency evaluation program or a nurse aide

competency evaluation program, the State must—

- Make at least one onsite visit to the entity providing the training or performing the competency evaluation;

- Determine whether the nurse aide training and competency evaluation program meets the course requirements of § 483.152 for nurse aide training and competency evaluation programs;

- Determine whether the nurse aide competency evaluation program meets the requirements of § 483.154 for nurse aide competency evaluation programs; and

- Not approve a nurse aide training and competency evaluation program performed by a skilled nursing facility or nursing facility that has been out of compliance with any requirement for participation within any of the 24 consecutive months prior to the State's review of the facility based program.

We believe the State must make at least one onsite visit to the entity offering the training if it is to ensure that the program being offered meets its written description and that facilities exist for the skills demonstration portion of the training and competency evaluation.

Our proposal that the State not be permitted to approve a program offered by a facility that has been out of compliance with any requirement for participation within the previous 24 consecutive months is derived from sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, which impose that prohibition.

In § 483.151(c), we would require that the State respond to the requestor with either a notice of the action taken on the request or a request for additional information within 90 days of the date of the facility's request for review and approval of a nurse aide training and competency evaluation program or competency evaluation program or within 90 days of the receipt of additional information requested by the State. We believe that 90 days is a reasonable period within which the State should be expected to act on a facility's request. However, we would welcome public comment on the reasonableness of this time period.

In § 483.151(d), we would specify that the State may not grant approval of a program for a period longer than 2 years. Sections 1819(f)(2)(A)(iii) and 1919(f)(2)(A)(iii) of the Act require that the regulations specify the frequency and methodology for a State's review of the nurse aide training and competency evaluation program and nurse aide competency evaluation programs it approves. Because these entities may

have no other governmental oversight, we believe review at least every 2 years to determine if they can be reapproved is reasonable. We welcome comments on the frequency of these reviews.

In § 483.151(e), we address the State requirements for withdrawing approval of a nurse aide training and competency evaluation program or competency evaluation program. We are proposing that the State must withdraw approval of a facility-based nurse aide training and competency evaluation program when it makes a determination that the facility is out of compliance with a requirement for participation, as specified in part 483, subpart B as a skilled nursing facility or as a nursing facility. (We note that the effective date for subpart B of part 483 has been delayed until October 1, 1990 by section 6901(a) of OBRA '89. We expect that our final revision of § 483.151(e)(1) would not be effective until that date.) As we indicated earlier, we are prohibited by sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act from permitting a State to approve a nurse aide training and competency evaluation program that is performed by a facility that is out of compliance with a requirement for participation. Thus, we would require that a State withdraw its approval from a program when it becomes aware that the program would no longer meet the requirements for approval.

In this section we also propose that the State may withdraw approval of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program if the State determines that the programs fail to meet any one of the applicable requirements of §§ 483.152 or 483.154. We do not believe that it is appropriate for a program to continue operating if the State knows it has ceased to comply with the requirements for approval.

We propose to require that the State withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program if the entity providing the program does not agree to permit unannounced visits by the State to review the program. We believe that unannounced visits to review and assess programs as they operate would enable States to ensure that the requirements for approval are met. It has been our policy to make unannounced visits to nursing homes to verify ongoing compliance with certification requirements, and this policy has a proven record of allowing accurate assessments.

In § 483.152 we propose to specify the requirements that must be met by a

nurse aide training and competency evaluation program that is offered by or approved by a State. To be approved, a nurse aide training and competency evaluation program must meet the course structure, format, content, and fee requirements discussed below. Exceptions are also provided to reflect requirements added by section 6901(b)(3)(D) of OBRA '89.

In § 483.152(a), as specifically required by sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act, we require a training and competency evaluation program to consist of at least 75 hours of initial training and to contain as a minimum the subjects specified in § 483.152(b).

We would require that the nurse aide training and competency evaluation program provide for at least 16 hours of supervised practical training, which we propose to define as training in a clinical setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse (RN) or a licensed practical nurse (LPN). This requirement can only be met by hands-on training directly supervised by an individual qualified to perform the tasks as discussed below. We believe that at least 16 hours of training is essential for an individual to learn the range of techniques necessary to care for a resident properly, and we encourage comment on the suitability of this time frame. Although we would require that the program contain at least 16 hours of such training to be approved, States would be able to require more than 16 hours of training if they choose to do so.

As noted above, we propose to require that nurse aide training and competency evaluation programs meet specified requirements for qualified personnel. We propose in § 483.152(a)(4)(i) and (ii) that the training of nurse aides be performed by or under the general supervision of an RN who has a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long term care services. We believe that this level of education and experience is necessary to ensure that the training and competency evaluation program meets its objectives of providing the education and knowledge needed for individuals to function competently as nurse aides in nursing facilities.

In a nursing facility based program, the training of nurse aides may be performed by or under the supervision of the director of nursing for the facility. We recognize that in facility-based programs the director of nursing may be the most competent person to manage

the training and competency evaluation program and that there is no reason that he or she should not be permitted to supervise the program.

We would permit other personnel from the health professions and other related fields to be used to supplement the instructor. These individuals may include, but are not limited to registered nurses, licensed practical/vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech, language/hearing therapists, and resident rights experts. We believe that individuals from these varied fields can make significant contributions to the education of nurse aides. Nurse aides have the most significant impact on the quality of life of residents of nursing facilities and therefore need a broad range of knowledge beyond the ability to perform specific tasks properly. We believe that instruction supplemental to nursing instruction would be beneficial to them.

We are considering whether to permit an LPN with long term care experience to conduct or supervise the training of nurse aides in a facility-based program, while requiring that an RN with long term care facility experience conduct or supervise the training in a non facility-based program. Although this provision is not contained in these proposed regulations, it was in the State Operations Manual instructions issued to State survey agencies and HCFA regional offices in April 1989, and it has generated many comments. Commenters objected to the restrictions, pointing out that an LPN is as capable of running a non facility-based program as of running a facility-based program. Therefore, we are soliciting public comments on the question of whether an LPN may conduct or supervise the training in facility-based and/or non facility-based programs.

We propose in § 483.152(a)(5) to require that a nurse aide training and competency evaluation program contain competency evaluation procedures that are specified in § 483.154. We believe that it is appropriate for the competency evaluation requirements that must be met for a nurse aide competency evaluation program to be approved by the State also to be required for a nurse aide training and competency evaluation program to be approved by the State.

In § 483.152(b), we propose the minimum curriculum that the nurse aide training and competency evaluation program must meet to be approved by

the State. The minimum curriculum is an expansion upon the minimum content requirement of sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act. In developing our proposed minimum curriculum, we considered the content requirements of pre-existing nurse aide training programs such as the Job Corps program curriculum of the Department of Labor and the curriculum of the American Red Cross, and we are interested in commenters' views of the curriculum.

To be approved by the State, we would require that the curriculum of the nurse aide training program include at least the following subjects:

- At least 16 hours of training in the following areas prior to any direct contact with a resident:

- Communication and interpersonal skills;
- Infection control;
- Safety/emergency procedures;
- Promoting residents' independence; and
- Respecting residents' rights.

The remainder of the 75 hours of training must include:

- Basic nursing skills:
- Taking and recording vital signs;
- Measuring and recording height and weight;
- Caring for the residents' environment;
- Recognizing abnormal signs and symptoms of common diseases and conditions; and
- Caring for residents when death is imminent.

- Personal care skills, including, but not limited to:

- Bathing;
- Grooming, including mouth care;
- Dressing;
- Toileting;
- Assisting with eating and hydration;
- Proper feeding techniques;
- Skin care; and
- Transfers, positioning, and turning.

- Mental health and social service needs.

- Modifying aide's behavior in response to residents' behavior;
- Identifying developmental tasks associated with the aging process;
- Behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior;
- Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
- Using the resident's family as a source of emotional support.

- Care of cognitively impaired residents

- Techniques for addressing the unique needs and behaviors of individuals

- with dementia (Alzheimer's and others);
- Communicating with cognitively impaired residents;
- Understanding the behavior of cognitively impaired residents;
- Appropriate responses to the behavior of cognitively impaired residents; and
- Methods of reducing the effects of cognitive impairments.

- Basic restorative services.
- Training the resident in self care according to the resident's abilities;
- Use of assistive devices in transferring, ambulation, eating, and dressing;
- Maintenance of range of motion;
- Proper turning and positioning in bed and chair;
- Bowel and bladder training; and
- Care and use of prosthetic and orthotic devices.

- Residents' Rights
- Providing privacy and maintenance of confidentiality;
- Promoting the residents' right to make personal choices to accommodate their needs;
- Giving assistance in resolving grievances and disputes;
- Providing needed assistance in getting to and participating in resident and family groups and other activities;
- Maintaining care and security of residents' personal possessions;
- Providing care which maintains the resident free from abuse, mistreatment, and neglect, and the need to report any such instance to appropriate facility staff; and
- Maintaining the resident's environment and care to avoid the need for restraints.

We propose to require that each of these subject areas be covered because we believe that they are necessary to ensure the health and safety of residents, since most of the care that is provided to residents of skilled nursing facilities and nursing facilities is provided by nurse aides. They are essentially the same as the guidelines specified in the State Operations Manual at section 4121, which we issued in April 1989.

We considered whether or not to require, under course content requirements in § 483.152(b)(1)(iii), that safety and emergency procedures include cardio-pulmonary resuscitation (CPR). In the guidance we provided to States in the Medicare State Operations Manual (rev. 223, April 1989) and the Medicaid State Manual (rev. 62, April 1989), we did include CPR in the minimum curriculum, and since then, we have received numerous objections from nurses, aides, and facilities. Their

objections focused on the cost of such a requirement and the advisability of devoting so many hours of training to a seldom used skill. The manual instructions were intended as guidance to States, and in the absence of Federal regulations, such items as CPR that are not specifically identified in sections 1819(f)(2) and 1919(f)(2) of the Act are not required to be included in a training program in order for the State to approve it.

In these proposed regulations, we are not specifically requiring that CPR be included in nurse aide training of safety and emergency procedures, but we are interested in receiving further public comment on this issue.

In § 483.152(c), we propose that no nurse aide may be charged for any portion of a nurse aide training and competency evaluation program including any fees for textbooks or other required course materials. This provision is mandated by section 6901(b)(3)(D) of OBRA '89.

We propose to include at § 483.154 the requirements for nurse aide competency evaluation programs to be offered or approved by the State. In this section, we would address the content of the competency evaluation program, administration of the competency evaluation, nursing facility proctoring of the competency evaluation, and actions that follow both successful and unsuccessful completion of the program.

We would require that the State inform any individual who takes the competency evaluation in advance that a record of the successful completion of the evaluation will be included in the State's nurse aide registry established under § 483.156. We propose to include this requirement because we believe that the individual should be advised that successful completion of the program will result in his or her name being entered in a State registry.

In § 483.154(b), we propose that the competency evaluation must—

- Allow an aide, at his or her option, to establish competency through methods other than passing a written examination;

- Address each course requirement specified in § 483.152(b) (the minimum curriculum requirements for nurse aide training and competency evaluation programs);

- Be developed from a pool of test questions, only a portion of which is used in any one examination; and

- Use a system that maintains the integrity of both the pool of questions and the individual examinations.

We are proposing, as required by section 6901(b)(3)(D) of OBRA '89, that

the competency evaluation must allow an aide, at his or her option, to establish competency through methods other than passing a written examination.

We would require that the competency evaluation address each topic in § 483.152(b), the minimum curriculum for nurse aide training and competency evaluation programs to be approved by the State. We chose to make the areas of evaluation identical to the minimum areas for training because the Act specifies identical areas for training and competency evaluation programs in sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) and for competency evaluation programs in sections 1819(f)(2)(A)(ii) and 1919(f)(2)(A)(ii) of the Act.

The examination must be developed from a pool of test questions, only a portion of which is to be used in any one examination. Also, the examination must use a system that prevents disclosure of both the pool of questions and the individual examinations. We are proposing these requirements because we believe that they are necessary to preserve the integrity of the examinations. Preservation of the integrity of the examinations is necessary to ensure that the individuals who are found competent on the basis of test results to function as nurse aides have been accurately evaluated in all areas of concern.

In § 483.154(b)(2), we propose to require that the competency evaluation include a demonstration of the tasks that the individual will be expected to perform as part of his or her function as a nurse aide. We believe that a demonstration of skills is essential to any determination of whether an individual is competent to function as a nurse aide since the proper performance of these tasks has such a great bearing on the health and welfare of the resident. The demonstration would have to include any task that the individual would be permitted to perform as a nurse aide.

In § 483.154(c), we propose requirements that govern the administration of the competency evaluation. Specifically, we propose to require that the competency evaluation be administered and evaluated only by the State directly or by a State approved entity which is neither a skilled nursing facility that participates in Medicare nor a nursing facility that participates in Medicaid. The State maintains responsibility for assuring that individuals meet the competency evaluation requirements. This restriction on who may perform competency evaluation programs is based upon sections 1819(f)(2)(B)(iii)(II) and

1919(f)(2)(B)(iii)(II) of the Act, which require that the regulations prohibit States from delegating the State responsibility for competency evaluations to facilities. We also propose that no charges for the competency evaluation may be imposed on any nurse aide. This implements section 6901(b)(3)(D) of OBRA '89.

We would require that the skills demonstration part of the evaluation be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide and that the skills demonstration part be administered and evaluated by a registered nurse with at least one year's experience in providing care of the elderly or the chronically ill of any age. We believe that observation of an individual in a facility-like setting by a registered nurse who is experienced in the care of the nursing home population is necessary to determine if an individual is competent to provide care to residents. The tasks that will be evaluated are essential to the health and welfare of the residents, who have physical and medical problems that require proper care to prevent deterioration in their health status or to enable them to achieve the most improvement possible. We believe that requiring a registered nurse with this level and type of experience increases the likelihood that aides will be able to provide care that approaches these goals.

In § 483.154(d), we address State authority to permit nursing facility proctoring of competency evaluation. We propose that nurse aides may be permitted to have the competency evaluation performed at the facility in which they are or will be employed unless the facility is out of compliance with any of the requirements of participation within any of the 24 months prior to the evaluation. This is required by section 6901(b)(3)(D) of OBRA '89. We would authorize the State to permit the examination to be proctored by facility personnel if the State finds that the procedure adopted by the facility ensures that the competency evaluation program is secure from tampering; is standardized and scored by a testing, educational, or other organization approved by the State; and requires no scoring by the facility personnel. We believe that a properly secured standardized examination could be administered by the facility without conflict and that proctoring presents a practical and efficient way of performing competency evaluations for many individuals.

We are considering whether to allow facility personnel to read objective or

multiple choice questions to an aide as part of an oral examination. We request public comment on this potential requirement.

We propose that the State must not permit facility personnel to proctor the skills demonstration portion of the evaluation. We considered allowing proctoring of the skills demonstration, but were unable to think of a method for documenting individual performance without a subjective determination by the facility. We welcome public comment on this requirement.

We would require the State to retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff. Clearly, in such circumstances, the facility's proctoring of the competency evaluation can no longer be trusted as a valid representation of an individual's competency to function as a nurse aide.

In § 483.154(e), we propose requirements regarding what can be considered successful completion of the competency evaluation program. The State must establish the overall standard for satisfactory completion of its approved competency evaluation program. However, we require that at a minimum, the State must require the individual to complete successfully all of the personal care skills specified in § 483.152(b)(3) and any others they would be permitted to perform in the facility. We propose this minimum standard for satisfactory completion of a competency evaluation program because we believe that the personal care skills identified in that section are the most important aspect of competency to be evaluated since improper performance of any one of them could result in deterioration of a resident's health status. Of course, the State would be able to add more skills that the individual would have to demonstrate properly and would also be able to add other minimal requirements.

We would require that a record of successful completion of the competency evaluation be included in the nurse aide registry established under § 483.156 within 30 days of the date the individual is found to be competent. We are imposing a time frame upon States because we believe that a time frame is necessary to prevent unreasonable delays in the inclusion of the data in the registry. We propose the 30 day time frame because we believe that it is a reasonable standard.

In § 483.154(f), we propose that if the individual fails to complete the examination satisfactorily, he or she

must be advised of the areas of inadequacy and that he or she has at least 3 opportunities to take the evaluation. The State may impose a maximum (but no less than 3) upon the number of times an individual may attempt to complete the competency evaluation successfully. We are proposing these requirements to ensure that individuals who want to function as nurse aides will have a reasonable opportunity to complete the competency evaluation program successfully. We do not want the competency evaluation process required by the statute to have the undesirable effect of reducing the numbers of persons who will choose to work as nurse aides. By advising individuals who have not successfully completed the competency evaluation program of the areas of weakness and that they have several attempts to complete it successfully, we hope that they will be able to complete it successfully on a subsequent attempt. We have proposed that States permit prospective aides to take the test a minimum of three times. However, we wish to balance the interests of aides with the interest of the States that operate the testing programs. Therefore, we are especially interested in comments on the issue of how many times a retest must be permitted.

Although not addressed in the proposed rule, we wish to solicit public comments on the question of whether private duty nurse aides (also called "sitters") who are hired by residents or their families to provide care to residents of nursing facilities should be required to complete a State approved nurse aide training and competency evaluation program or a State approved competency evaluation program (or meet the OBRA '89 requirements for waiver of that requirement) and be placed on the registry as a condition of being used to provide care in participating skilled nursing facilities and nursing facilities. Under sections 1819(b)(5)(F) and 1919(b)(5)(F), nurse aides (or "sitters") who provide nurse aide services on a voluntary basis without monetary compensation are not required to complete a nurse aide training and competency evaluation program or competency evaluation program.

Specifically, we believe that the law does not necessarily preclude our taking either of the two following positions on the issue:

- We could revise the requirements for participation for skilled nursing facilities and nursing facilities to require that facilities only permit private duty nurse aides to provide care to residents

in the facility if they have successfully completed a State approved nurse aide training and competency evaluation program or a State approved competency evaluation program (or meet the OBRA '89 requirements for waiver of that requirement) and have been added to the registry. Sections 1819(b)(5)(C) and 1919(b)(5)(C) of the Act would support this requirement because these sections require that a facility " * * * must not permit an individual other than in a training and competency evaluation program approved by the State, to serve as a nurse aide * * *". Moreover, the definition of a "nurse aide" at sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act defines a "nurse aide" as meaning " * * * any individual providing nursing or nursing-related services to residents * * *". Hence, these sections could be read together to prohibit a facility from permitting an individual who has not successfully completed a nurse aide training and competency evaluation program or a competency evaluation program to provide services in the facility unless he or she is a volunteer.

- Alternatively, sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act state that the facility " * * * must not use * * *" any individual as a nurse aide unless he or she has met the training and competency evaluation or competency evaluation requirements of that section. Since the private duty nurse is neither "used by the facility," nor paid by the facility (either directly or through a contract for services), the law does not appear to require that these private duty aides meet the requirements that a nurse aide used by the facility would have to meet.

Because we believe that we are not necessarily precluded from taking either position, we are requesting public comment and discussion of this issue. We have received a significant number of inquiries from residents, facilities, and States on this issue, and we expect to address it in the final regulation.

Nurse Aide Registry

Sections 1819(e)(2) and 1919(e)(2) of the Act require that States maintain a nurse aide registry that must include individuals who have successfully completed the competency evaluation for nurse aides. We propose to implement this requirement of the Act in § 483.156, which sets forth requirements concerning registry establishment, operation and content. It also sets forth requirements for disclosure of information from the registry to facilities and other interested parties.

In § 483.156(a) we would require that the State establish and maintain a

registry of nurse aides that meets the requirements of this section. The registry would be required to include at a minimum the information contained in paragraph (c) of this section, registry content (addressed separately below).

We propose that the registry be accessible to the public and health providers on a fixed schedule set by the State of at least 6 hours per day between the hours of 7:00 a.m. and 6:00 p.m., local time, Monday through Friday, except for State and Federal holidays, and notify facilities in advance of changes in the hours of operation. We believe that this range of service is necessary to meet the needs of providers and the public for information from the registry. Turnover of nurse aides is significant, and we believe that the registry will be required to handle a sufficiently large volume of inquiries that the hours and days of operation are justified. However, we request public comment on this issue.

If the State chooses, the registry may also include home health aides who have successfully completed a home health aide competency evaluation program approved by the State. We are proposing that States may include home health aides in this registry because we recognize that there is often significant movement of nurse aides to home health agencies and vice versa. Should States choose to add home health aides to the registry and to use only home health aides who are on the registry, home health agencies would become aware if applicants had been found to have abused, neglected, or misappropriated property as nurse aides. Moreover, home health agencies could rely upon the registry as proof of completion of a certain level of training and competency for new employees. If a State wishes, it could establish home health aide training and competency evaluation requirements that individuals would need to meet before being placed on the home health aide registry.

We would require the registry to respond timely to written and telephone inquiries that request information from the registry. Facilities will need timely responses to be able to hire staff promptly.

We also propose that when the registry responds to an inquiry and reports that an aide has been found by the State survey and certification agency to have neglected or abused a resident or misappropriated property, the registry must also include any statement made by the nurse aide disputing the finding (as provided under paragraph (a)(5)). The inclusion of the aide's statement is required by sections

1819(e)(2)(B) and 1919(e)(2)(B) of the Act.

In § 483.156(b) we propose that the State may contract the daily operation and maintenance of the registry to a non-State entity. However, the State must maintain accountability for overall operation of the registry and compliance with these regulations. Moreover, we propose to require in this section that only the State survey and certification agency may place on the registry findings of abuse, neglect, or misappropriation of property.

We recognize that a State may determine that the most efficient means of managing a registry of this size would be for the State to subcontract it to a private entity. We also recognize that States may find it efficient to delegate the maintenance and operation of a registry to another entity in the State, for example, the component of the State that maintains the registry of licensed nurses. Should the State delegate or subcontract the registry outside the State government, the State continues to be responsible to the Secretary for compliance with all applicable requirements of these regulations.

We would provide that the only registry related function that cannot be subcontracted to a private entity or delegated to another entity of the State is the placement of findings of complaints of abuse, neglect, or misappropriation of property on the registry. The State survey and certification agency must, but other agencies may perform these investigations and only that agency of the State can place these findings on the registry. These investigations are performed under the authority of sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, which clearly specify that they will be performed " * * * through the agency responsible for surveys and certification of nursing facilities under this subsection * * *." We believe that it is appropriate to make one agency responsible for placing adverse findings on the registry.

In § 483.156(b)(3), we propose to require that the State renew a nurse aide's registration at least once every 2 years on a schedule set by the State. We are proposing this requirement because we believe that permitting longer periods of registration would make it virtually impossible for the State to detect individuals who have not functioned as a nurse aide for compensation for 24 consecutive months. As we indicated above, sections 1819(b)(5)(D) and 1919(b)(5)(D) of the Act preclude such individuals from functioning as nurse aides unless they have successfully completed another

training and competency evaluation program. Therefore, if the State becomes aware that an individual who is renewing his or her registration has not functioned as a nurse aide for compensation for 24 consecutive months, or longer, the State must deny registration until he or she successfully completes or demonstrates that he or she completed another training and competency evaluation program.

We propose that the State may charge registration fees from individuals listed in the registry. We recognize that registration fees are commonly charged for registered or licensed individuals outside of the health professions as well as in them (e.g. licensed nurses, barbers, steam engineers), and we have no authority to prohibit States from charging registration fees to nurse aides. We acknowledge that section 6901(b)(3)(D) prohibits charging nurse aides for training and competency evaluation programs. However, registration is not a part of those programs. Therefore, registration fees may be charged.

Proposed § 483.156(c) would contain the minimum content of the registry. We would require that the State include the individual's full name, maiden name and any other surnames used, last known home address, and date of birth. Maiden names and previously used surnames and birth dates would enable the registry to differentiate more easily between individuals with the same names. The address is necessary so that the State can mail the notice of reregistration to the individual when reregistration is appropriate. We are requiring the individual's last employer, date of hiring, and data of termination because we believe it is impossible for States to determine if an individual has not worked as a nurse aide for 24 consecutive months without this information.

We would require that the State include the date that the individual passed the competency evaluation and the date of the expiration of the individual's current registration. The date of successful completion is necessary evidence of completion, and it may be useful to a facility that is deciding whether to hire an individual. We also believe that the date of the expiration of the current registration is necessary so that the State can send the reregistration application timely. In addition, the State would be required to include the individual's last known employer and the date of hiring by that employer. This information is essential to ensure that the nurse aide has not had 24 consecutive months during which he or she has not functioned as a nurse

aide. We believe that this information is necessary to be able to determine if the individual's registration would have to be revoked, pending successful completion of another training and competency evaluation.

We would require that the State assign a registration number to an individual when he or she successfully completes the competency evaluation program or is determined exempt from that requirement based on section 6901 of OBRA '89. We also propose that the registration number must include a modifier which indicates the type of registration. We propose to require the use of a registration number as a means of ensuring that the individual is qualified to function as a nurse aide and as a means of safeguarding the registry from misuse.

We would also require that a State include the name and address of the entity that administered the competency evaluation and any control or identification number if the State chooses to assign such a number. This information is necessary to ensure that the competency evaluation, if not performed by the State, was performed by an entity that was approved by the State, or was waived. Moreover, the information may be useful to facilities who are deciding whether to employ an individual. We are not requiring that the State assign control or identification numbers to entities that it has approved to perform competency evaluations. However, if the State chooses to do so, the number should be part of the identification in the registry.

In accordance with sections 1819(e)(2)(B) and 1919(e)(2)(B) of the Act, we also propose to require in § 483.156(c)(1)(ix) that the State include the following information on any finding by the State of abuse, neglect, or misappropriation of property by an individual nurse aide:

- Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;
- The date of the hearing, if the individual chose to have one, and its outcome; and
- A statement by the individual disputing the allegation, if he or she chooses to make one.

Although not explicitly stated in the regulation, we would expect States to determine if adverse findings from other States exist before adding an individual to the registry. We welcome public comment on this issue.

In § 483.156(c)(2), we propose that the State may exclude registry entries for

individuals whose registrations have been expired for 24 months or for individuals who have ceased to function as nurse aides for compensation for a period of 24 consecutive months when the individual ceases to be qualified to function as a nurse aide, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property as specified in paragraph (c)(1)(ix) of this section. We recognize the need to keep the registry to a manageable size by deleting the entries for individuals who no longer qualify as nurse aides. However, we also believe that entries should be retained for individuals who have been found by the State survey and certification agency to have abused or neglected residents or to have misappropriated property since these individuals may otherwise let their registrations lapse and register at a later time to clear their records. We would require that adverse findings by the State survey agency be retained on the registry for at least 5 years. We recognize that there is a question about whether we should permit findings by the State survey and certification agency to be deleted at some point, and we request public comment on the maximum period we should require for retention of these records.

We propose in § 483.156(d) to address disclosure of the information contained in the registry. Sections 1819(e)(2)(B) and 1919(e)(2)(B) of the Act require that "[T]he State shall make available to the public information in the registry." This requirement was added to the law by section 411(l)(2)(H) of the Medicare Catastrophic Coverage Act (Pub. L. 100-360), effective as if included in the enactment of Pub. L. 100-203. However, there was no explanatory Conference Committee language to explain if the intent of Congress was to require that all information in the registry be disclosed or if the nature of the information to be disclosed to the public can be limited.

We propose in § 483.156(d)(1) to require that the State disclose within 10 working days to any requester whether the name of an individual specified by the requester is included on the registry and, if so, the date of the individual's competency evaluation and the name of the entity that performed the competency evaluation. The State could, at its option, disclose any other information on the registry to any requester. However, the State would not be required by these regulations to disclose any other information to any requester. We propose the time limit of 10 days because we think it is reasonable. We propose this

requirement because we believe that the public has a right to know if an individual who represents himself or herself as a registered nurse aide has, in fact, been registered by the State as completing a State approved nurse aide training and competency evaluation program or a State approved competency evaluation program. However, much of the other information contained on the registry (date of birth, home address, maiden name or any other names used, etc.) does not seem to be appropriate for public disclosure. We request public comment on this requirement and on what other information contained in the registry should be required to be disclosed to any requester by the registry.

On the other hand, we would require that the State disclose all information on the registry within 10 working days to certain enumerated health care providers, to the State's long term care ombudsman, and to an official agency determined by the State as having a need to know. We believe these entities, which have the greatest need to know all of the information on the registry, should have it available to them.

We also would require that the State provide the nurse aide with a copy of all information contained in the registry on him or her within 30 days of the date the individual's name is placed on the registry. The State must also provide the nurse aide with a copy of all information on him or her contained in the registry within 30 days of the change or addition of any information to the registry. The nurse aide must be permitted at least 30 days within which to correct any misstatements or inaccuracies contained in the information maintained on them by the registry. We are proposing these requirements because we believe that since the livelihood of a nurse aide now depends, in part, on the registry entry to be maintained by the State, the nurse aide must be provided with a copy of the information initially and whenever it is changed, and must be provided a reasonable period of time to correct any errors in it. We recognize that this imposes a burden upon the States, but because the registry information is now a key factor in whether an individual can be hired or can continue to function as a nurse aide, it is important that the safeguards be in place to assure that the information in the registry is correct.

Section 1903(a)(2)(B) of the Act establishes that nurse aide training and competency evaluation are State administrative costs. New § 483.158 would implement this section of the statute. It also would clarify that FFP is only available for nurse aides who are

employed by a facility or who have a commitment to be employed by a facility. We are proposing this requirement because we do not believe that there is any indication that Medicaid should pay for competency evaluation programs and training and competency evaluation programs for persons unassociated with a nursing facility.

III. Revisions to the Regulations

We propose to make the following revisions to the regulations in title 42:

1. In part 431, we would add new § 431.120, which specifies State Medicaid agency responsibilities with respect to statutory requirements in sections 4201(a) and 4211(a) of OBRA '87.
2. In part 433, § 433.15, we would specify the FFP rates for administration associated with nurse aide training and competency evaluation programs and competency evaluation programs specified in OBRA '89.
3. In part 483, subpart B, we would revise § 483.75(g) to reflect statutory implementation dates and other ways nurse aide competency can be established, as required by OBRA '89.
4. In part 483, we would redesignate existing subpart D as subpart I, and add a new subpart D containing §§ 483.150 through 483.158, which specify State requirements with respect to nurse aide training and competency evaluation and establishing a nurse aide registry.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble of that rule.

V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a final regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is that will be likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all SNFs and NFs to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a metropolitan statistical area and has fewer than 50 beds.

These proposed changes primarily would conform the regulation to the legislative provisions of sections 4201(a) (for Medicare) and 4211(a) (for Medicaid) of OBRA '87 and section 6901(b)(5) of OBRA '89. The provision requiring States to use an exam to qualify nurses aides for competency could be considered discretionary and may cause some States to incur additional costs.

We expect that a State survey agency or a State approved entity would encounter some incremental costs associated with the development and issuance of an exam. These costs may fall upon either the State or outside entities, depending on each State's decision. However, we believe that these initial costs are likely to produce long-term benefits that cannot be estimated. For example, we expect improvement in the quality of health care in SNFs and NFs as a result of better qualified nurses aides.

Although we believe that this discretionary provision would result in incremental costs, we believe that the costs would be insignificant when compared to the resulting increased quality of care. In that this discussion of costs is not conclusive, we encourage comments and any applicable data concerning this discretionary provision if there is a perception that it may result in significant increased costs.

For these reasons, we have determined that the threshold criteria of E.O. 12291 would not be met, and a regulatory impact analysis is not required. Further, we have determined,

and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

VI. Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with Chapter 35 of Title 44, United States Code. However, sections 4204(b) and 4214(d) of OBRA '87 provide for a waiver of Paperwork Reduction Act requirements for these regulations.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

Chapter IV of title 42 would be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 431.120 is added to subpart C to read as follows:

§ 431.120 State requirements with respect to nursing facilities.

(a) *State plan requirements.* A State plan must—

(1) Provide that the requirements of subpart D of part 483 of this chapter are met; and

(2) Specify the procedures and rules that the State follows in carrying out the specified requirements, including review and approval of State-operated programs.

(b) *Basis and scope of requirements.* The requirements set forth in part 483 of this chapter pertain to the following aspects of nursing facility services and

are required by the indicated sections of the Act.

(1) Nurse aide training and competency programs, and evaluation of nurse aide competency (1919(e)(1) of the Act).

(2) Nurse aide registry (1919(e)(2) of the Act).

PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as follows:

1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912 and 1919(e) of the Social Security Act; 42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

2. Section 433.15 is amended by adding a new paragraph (b)(8) to read as follows:

§ 433.15 Rates of FFP for administration.

• • • • •
(b) • • •

(8) Nurse aide training and competency evaluation programs and competency evaluation programs described in 1919(e)(1) of the Act: for calendar quarters beginning on or after 7/1/88 and before 7/1/90: the lesser of 90% or the Federal medical assistance percentage plus 25 percentage points; for calendar quarters beginning after 7/1/90: 50%. (Section 1903(a)(2)(B) of the Act).

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

C. Part 483 is amended as follows:

1. The heading of part 483 is revised to read as set forth above.

1a. The authority citation for part 483 is revised to read as follows:

Authority: Secs. 1102, 1819(a)-(f), 1905(c) and (d), and 1919(a)-(f) of the Social Security Act (42 U.S.C. 1302, 1395i(3)(a)-(f), 1396d(c) and (d), and 1396r(a)-(f)).

2. The table of contents for part 483 is amended by redesignating existing subpart D, Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, as subpart I, and adding a new subpart D containing §§ 483.150 through 483.156 to read as follows:

Sec.

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

Sec.

- Sec. 483.150 Deemed meeting of requirements, waiver of requirements.
 Sec. 483.151 State review and approval of nurse aide training and competency evaluation programs.
 Sec. 483.152 Requirements for approval of a nurse aide training and competency evaluation program.
 Sec. 483.154 Nurse aide competency evaluation.
 Sec. 483.156 Registry of nurse aides.
 Sec. 483.158 FFP for nurse aide training and competency evaluation.

Subpart B—Requirements for Long Term Care Facilities

3. In subpart B, the undesignated text of § 483.75 is reprinted and paragraph (g) is revised as follows:

§ 483.75 Level A requirement: Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(g) *Level B requirement: Required training of nurse aides—(1) General rule.* Effective October 1, 1990, a facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other basis, unless:

- (i) That individual is competent to provide nursing and nursing related services; and
- (ii) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State as meeting the requirements of §§ 483.151–483.154 of this part; or
- (iii) That individual has been deemed competent as provided in § 83.150 (a) and (b).

(2) *Competency evaluation programs for current employees.* Effective January 1, 1990, a facility must provide, for individuals used as nurse aides, a competency evaluation program approved by the State, and preparation necessary for the individual to complete the program by October 1, 1990.

(3) *Competency.* Effective October 1, 1990, a facility must permit an individual to serve as a nurse aide or provide services of a type for which the

individual has not demonstrated competence only when—

(i) The individual is in a training and competency evaluation program or a competency evaluation program approved by the State; and

(ii) The facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

(4) *Required retraining.* Effective October 1, 1990, when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the individual to complete a new training and competency evaluation program.

(5) *Regular in-service education.* Effective October 1, 1990, the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(6) *Definition of nurse aide.* For purposes of this section, the term "nurse aide," means any individual providing nursing or nursing-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

3a. Subpart D of part 483 is redesignated as subpart I and a new subpart D (§§ 483.150 through 483.156) is added to read as follows:

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

§ 483.150 Deemed meeting of requirements, waiver of requirements.

(a) A nurse aide is deemed to satisfy the requirement of completing a training and competency evaluation approved by the State if he or she successfully completed a training and competency evaluation program before July 1, 1989 if—

(1) The aide would have satisfied this requirement if—

(i) At least 60 hours were substituted for 75 hours in sections 1819(f)(2) and 1919(f)(2) of the Act; and

(ii) The individual had made up at least the difference in the number of hours in the program he or she completed and 75 hours in supervised practical nurse aide training or in

regular in-service nurse aide education; or

(2) The individual was found to be competent (whether or not by the State) after the completion of nurse aide training of at least 100 hours duration.

(b) A State may waive the requirement for an individual to complete a competency evaluation program approved by the State for any individual who can demonstrate to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1989.

§ 483.151 State review and approval of nurse aide training and competency evaluation programs.

(a) *State review and administration.*

(1) The State must—

(i) Offer a nurse aide training and competency evaluation program that meets the requirements of § 483.152 and/or a competency evaluation program that meets the requirements of § 483.154; and/or

(ii) Specify any nurse aide training and competency evaluation programs not offered by the State that the State approves as meeting the requirements of § 483.152 and/or competency evaluation programs not offered by the State that the State approves as meeting the requirements of § 483.154.

(2) The State may not delegate or subcontract the approval of these programs to an entity outside of the State government.

(3) If the State does not choose to offer one or both of the programs specified in paragraph (a)(1)(i) of this section, the State survey agency or another State government entity must review and approve or disapprove nurse aide training and competency evaluation programs and nurse aide competency evaluation programs when requested to do so by any Medicare participating skilled nursing facility or Medicaid participating nursing facility.

(4) The State survey agency must, in the course of all surveys, determine whether the nurse aide training and competency evaluation requirements of § 483.75(g) are met.

(b) *Requirements for approval of programs.* (1) Before the State approves a nurse aide training and competency evaluation program or a nurse aide competency evaluation program, the State must, on the basis of at least one onsite visit to the entity providing the training or performing the competency evaluation—

(i) Determine whether the nurse aide training and competency evaluation

program meets the course requirements of §§ 483.152; and

(ii) Determine whether the nurse aide competency evaluation program meets the requirements of § 483.154.

(2) The State may not approve a nurse aide training and competency evaluation program or competency evaluation program conducted by a skilled nursing facility or a nursing facility that has been found out of compliance with any of the requirements for participation in part 483 subpart B within any of the 24 consecutive months prior to the State's review of the facility based program.

(c) *Time for acting on a request for approval.* The State must, within 90 days of the date of a request under paragraph (a)(3) of this section or receipt of additional information from the requester—

(1) Advise the requester of the action taken by the State on the request; or

(2) Request additional information from the requesting entity.

(d) *Duration of approval.* The State may not grant approval for a period longer than 2 years.

(e) *Withdrawal of approval.* (1) The State must withdraw approval of a facility-based nurse aide training and competency evaluation program when it makes a determination that the facility is out of compliance with a requirement for participation, as specified in part 483, subpart B, as a skilled nursing facility or as a nursing facility.

(2) The State may withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program if the State determines that any of the applicable requirements of §§ 483.152 or 483.154 are not met by a nurse aide training and competency evaluation program or a nurse aide competency evaluation program.

(3) The State must withdraw approval of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program if the entity providing the program refuses to permit unannounced visits by the State to review the program.

§ 483.152 Requirements for approval of a nurse aide training and competency evaluation program.

(a) For a nurse aide training and competency evaluation program to be approved by the State, it must, at a minimum—

(1) Consist of no less than 75 hours of training;

(2) Include at least the subjects specified in paragraph (b) of this section; and

(3) Include at least 16 hours of supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.

(4) Meet the following requirements for instructors who train nurse aides:

(i) The training of nurse aides must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long term care facility services;

(ii) In a nursing facility-based program, the training of nurse aides may be performed by or under the general supervision of the director of nursing for the facility; and

(iii) Other personnel from the health professions may supplement the instructor, including, but not limited to, registered nurses, licensed practical/vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech/language/hearing therapists, and resident rights experts; and

(5) Contain competency evaluation procedures specified in § 483.154.

(b) The curriculum of the nurse aide training program must include—

(1) At least a total of 16 hours of training in the following areas prior to any direct contact with a resident:

(i) Communication and interpersonal skills;

(ii) Infection control;

(iii) Safety/emergency procedures;

(iv) Promoting residents' independence; and

(v) Respecting residents' rights.

(2) Basic nursing skills:

(i) Taking and recording vital signs;

(ii) Measuring and recording height and weight;

(iii) Caring for the residents' environment;

(iv) Recognizing abnormal signs and symptoms of common diseases and conditions; and

(v) Caring for residents when death is imminent.

(3) Personal care skills, including, but not limited to—

(i) Bathing;

(ii) Grooming, including mouth care;

(iii) Dressing;

(iv) Toileting;

(v) Assisting with eating and hydration;

(vi) Proper feeding techniques;

(vii) Skin care; and

(viii) Transfers, positioning, and turning.

(4) Mental health and social service needs:

(i) Modifying aide's behavior in response to residents' behavior;

(ii) Identifying developmental tasks associated with the aging process;

(iii) How and when to manage behavior by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior;

(iv) Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(v) Using the resident's family as a source of emotional support.

(5) Care of cognitively impaired residents:

(i) Techniques for addressing the unique needs and behaviors of individual with dementia (Alzheimer's and others);

(ii) Communicating with cognitively impaired residents;

(iii) Understanding the behavior of cognitively impaired residents;

(iv) Appropriate responses to the behavior of cognitively impaired residents; and

(v) Methods of reducing the effects of cognitive impairments.

(6) Basic restorative services:

(i) Training the resident in self care according to the resident's abilities;

(ii) Use of assistive devices in transferring, ambulation, eating, and dressing;

(iii) Maintenance of range of motion;

(iv) Proper turning and positioning in bed and chair;

(v) Bowel and bladder training; and

(vi) Care and use of prosthetic and orthotic devices.

(7) Residents' Rights.

(i) Providing privacy and maintenance of confidentiality;

(ii) Promoting the residents' right to make personal choices to accommodate their needs;

(iii) Giving assistance in resolving grievances and disputes;

(iv) Providing needed assistance in getting to and participating in resident and family groups and other activities;

(v) Maintaining care and security of residents' personal possessions;

(vi) Providing care which maintains the resident free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff;

(vii) Maintaining the resident's environment and care to avoid the need for restraints.

(c) Prohibition of charges. No nurse aide may be charged for any portion of a nurse aide training and competency evaluation program, including any fees for textbooks or other required course materials.

§ 483.154 Nurse aide competency evaluation.

(a) *Notification to Individual.* The State must advise in advance any individual who takes the competency evaluation that a record of the successful completion of the evaluation will be included in the State's nurse aide registry.

(b) *Content of the competency evaluation program—(1) Examination and alternative to examination.* The competency evaluation must—

(i) Allow an aide, at his or her option, to establish competency through methods other than passing a written examination;

(ii) Address each course requirement specified in § 483.152(b);

(iii) Be developed from a pool of test questions, only a portion of which is used in any one examination; and

(iv) Use a system that prevents disclosure of both the pool of questions and the individual competency evaluations.

(2) *Demonstration of skills.* The competency evaluation must include an acceptable demonstration of the tasks the individual will be expected to perform as part of his or her function as a nurse aide.

(c) *Administration of the competency evaluation.* (1) The competency examination must be administered and evaluated only by—

(i) The State directly; or

(ii) A State approved entity which is neither a skilled nursing facility that participates in Medicare nor a nursing facility that participates in Medicaid.

(2) No charges for the competency evaluation may be imposed on any nurse aide.

(3) The skills demonstration part of the evaluation must be—

(i) Performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide; and

(ii) Administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age.

(d) *Nursing facility proctoring of the competency evaluation.* (1) The competency evaluation may be conducted at the nursing facility at which the aide is (or will be) employed unless the facility is out of compliance with any of the requirements for participation within any of the 24

consecutive months prior to the competency evaluation.

(2) The State may permit the examination to be proctored by facility personnel if the State finds that the procedure adopted by the facility assures that the competency evaluation program—

(i) Is secure from tampering;

(ii) Is standardized and scored by a testing, educational, or other organization approved by the State; and

(iii) Requires no scoring by facility personnel.

(3) The State may not permit facility personnel to proctor the skills demonstration portion of the evaluation.

(4) The State must retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff.

(e) *Successful completion of the competency evaluation program.* (1) The State must establish a standard for satisfactory completion of the competency evaluation. To complete the competency evaluation successfully, the individual must, at a minimum, successfully demonstrate all of the personal care skills specified in § 483.152(b)(3) and any others that he or she would be permitted to perform in the facility.

(2) A record of successful completion of the competency evaluation must be included in the nurse aide registry provided in § 483.156 within 30 days of the date the individual is found to be competent.

(f) *Unsuccessful completion of the competency evaluation program.* (1) If the individual fails to complete the evaluation satisfactorily, the individual must be advised—

(i) Of the areas in which he or she was inadequate; and

(ii) That he or she has at least three opportunities to take the evaluation.

(2) The State may impose a maximum upon the number of times an individual may attempt to complete the competency evaluation successfully, but the maximum may be no less than three.

§ 483.156 Registry of nurse aides.

(a) *Establishment of registry.* The State must establish and maintain a registry of nurse aides that meets the requirement of this section. The registry—

(1) Must include as a minimum the information contained in paragraph (c) of this section;

(2) Must be accessible to the public and health providers on a fixed schedule set by the State at least 6 hours per day between the hours of 7 a.m. and 6 p.m.,

local time, Monday through Friday, except for State and Federal holidays, and notify facilities in advance of changes in the hours of operation;

(3) May include home health aides who have successfully completed a home health aide competency evaluation program approved by the State;

(4) Must include a process for timely responses to written and telephone inquiries that request information from the registry; and

(5) Must provide that any response to an inquiry that includes a finding of abuse, neglect, or misappropriation of property also include any statement disputing the finding made by the nurse aide, as provided under paragraph (c)(1)(ix) of this section.

(b) *Registry operation.* (1) The State may contract the daily operation and maintenance of the registry to a non-State entity. However, the State must maintain accountability for overall operation of the registry and compliance with these regulations.

(2) Only the State survey and certification agency may place on the registry findings of abuse, neglect, or misappropriation of property.

(3) The State must require renewal and updating of a nurse aide's registration at least once every 2 years on a schedule set by the State.

(4) The State may charge registration fees from individuals listed in the registry.

(c) *Registry Content.* (1) The registry must contain at least the following information on each individual who has successfully completed a nurse aide training and competency evaluation program which meets the requirements of § 483.152 or a competency evaluation which meets the requirements of § 483.154 and has been found by the State to be competent to function as a nurse aide or who may function as a nurse aide because of meeting criteria in § 483.150:

(i) The individual's full name, including a maiden name and any other surnames used;

(ii) The individual's last known home address;

(iii) The registration number assigned by the State to the individual when he or she successfully completes the competency evaluation program. The registration number must include a modifier which indicates the type of registration;

(iv) The individual's date of birth;

(v) The individual's last known employer and the date of hiring and termination by that employer;

(vi) For an individual who qualifies under § 483.150, an explanation of how the individual met the criteria of that section;

(vii) The date that the individual passed the competency evaluation and the date of the expiration of the individual's current registration;

(viii) The name and address of the State approved entity which administered the competency evaluation and any control or identification number if the State chooses to assign such a number; and

(ix) The following information on any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual must be included in the registry within 30 days of the finding and must remain in the registry for at least 5 years:

(A) Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;

(B) The date of the hearing, if the individual chose to have one, and its outcome; and

(C) A statement by the individual disputing the allegation, if he or she chooses to make one; and

(2) The registry may exclude entries for individuals whose registrations have been expired for 24 consecutive months or for individuals who have ceased to function as nurse aides for compensation for a period of 24 consecutive months when the individual ceases to be qualified to function as a nurse aide unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of patient property.

(d) *Disclosure of information.* (1) The State must disclose to any requester within 10 working days a minimum of whether an individual specified by the requester is included on the registry and, if so, the date of the individual's competency evaluation and the name of the entity that performed the competency evaluation. The State may disclose other information it deems appropriate.

(2) The State must disclose all information contained in the registry within 10 working days to any Medicare or Medicaid participating skilled nursing facility, nursing facility, home health agency, hospital, ombudsman, or any other representative of an official agency with a need to know, upon receipt of a written request for such information, which must include the reason for the request.

(3) The State must provide the nurse aide with a copy of all information

contained in the registry on him or her within 30 days of the date the individual is placed on the registry. The State must also provide the nurse aide with a copy of all information contained in the registry on him or her within 30 days of any changes or additions to this information. The nurse aide must be permitted at least 30 days within which to correct any misstatements or inaccuracies contained in the information maintained by the registry on that individual.

§ 483.158 FFP for nurse aid training and competency evaluation.

(a) State expenditures for nurse aid training and competency evaluation programs and competency evaluation programs are administrative costs. They are matched as indicated in § 433.15(b)(8) of this chapter.

(b) FFP is only available for State expenditures associated with training and evaluating of persons employed by a facility or who have a commitment to be employed by a facility.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance)

Dated: February 27, 1990.

Gail R. Wilensky,
Administrator, Health Care Financing
Administration.

Approved: March 16, 1990.

Louis W. Sullivan,
Secretary.

[FR Doc. 90-6614 Filed 3-20-90; 11:36 am]

BILLING CODE 4120-01-M

42 CFR Parts 405, 431, and 483

[BPD-661-P]

RIN 0938-AD81

Medicare and Medicaid Programs; Preadmission Screening and Annual Resident Review

AGENCY: Health Care Financing
Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes State requirements for preadmission screening and annual review of individuals with mental illness or mental retardation who are applicants to or residents of nursing facilities that are certified for Medicaid. It also proposes an appeals system for persons who may be transferred or discharged from facilities or who wish to dispute a determination made in the preadmission screening and annual review process. These provisions would implement several provisions of the

Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100-203.

DATES: To assure consideration, comments must be submitted to the appropriate address, as provided below, and should be received no later than 5:00 p.m. on May 22, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-661-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-661-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Julie H. Walton, (301) 966-4622.

SUPPLEMENTARY INFORMATION:

I. Background

General

On February 2, 1989, we published in the *Federal Register* (54 FR 5316) final regulations with a comment period which specified new and revised requirements that long-term care facilities (skilled nursing facilities (SNFs) under Medicare, and SNFs, intermediate care facilities (ICFs), and, effective October 1, 1990, nursing facilities (NFs) under Medicaid) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients. We issued the regulations following a notice of proposed rulemaking (52 FR 38582, October 16, 1987) to refocus the requirements for participation in both programs to actual facility performance in meeting residents' needs in a safe and healthful environment. The previous set of requirements had focused on the capacity of the facility to provide

appropriate care. In addition, we needed to simplify Federal enforcement procedures by using a single set of requirements that apply to all activities common to SNFs, ICFs, and NEs.

Many of the requirements in the February 2 regulations reflected detailed, self-implementing provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (P.L. 100-203), which was enacted after we issued our proposed rule. Commenters were aware of the pending legislation and many commenters supported the OBRA '87 changes. An effective date of August 1, 1989 was specified for the February 2 regulations, except for those OBRA '87 provisions that relied on a statutory effective date of October 1, 1990. On July 14, 1989 (54 FR 29717), and December 29, 1989 (54 FR 53611) we published rules that delayed the effective date from August 1, 1989 to January 1, 1990 and October 1, 1990, respectively. The delay to October 1, 1990 is required by section 6901(a) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Pub. L. 101-239.

Scope of Proposed Rule

This rule proposes the way we would implement the OBRA '87 provisions that affect health and safety requirements for residents of long term care facilities and that require a notice and comment procedure prior to implementation. This proposal contains the following components:

- Requirements imposed on States in accordance with sections 1819(e) and 1919(e) of the Social Security Act (the Act) (sections 4201(a) and 4211(a) of OBRA '87), which include—
- Preadmission screening and annual review (PASARR) of the need for admitting or retaining individuals with mental illness (MI) or mental retardation (MR) in NFs that are certified for Medicaid; and
- Appeals systems for persons who may be transferred or discharged from facilities or who wish to dispute a determination made in the preadmission screening and annual review process.

II. Proposed Requirements of OBRA '87

Legislative Changes

Prior to the enactment of OBRA '87, there was no Federal requirement that all individuals with mental illness or mental retardation who applied for admission to a Medicaid NF, without respect to the method of payment for their care, be screened prior to admission to determine if they required the level of care provided by the NF and, if so, whether they needed active

treatment for their mental illness or mental retardation. Similarly, there was no explicit Federal requirement for annual review of all individuals with mental illness or mental retardation who reside in NFs, regardless of their method of payment.

Current Medicaid regulations, however, provide for physician certification and recertification of the need for care, inspections of care and independent professional review by teams which report recommendations to the State Medicaid agency, and the facility's own internal utilization review. All three of these Medicaid utilization control mechanisms apply only to Medicaid recipients, not all residents without respect to their method of payment. They also apply to all Medicaid recipients, not just those with mental illness or mental retardation. The populations covered by the existing utilization control mechanisms and by the preadmission screening and annual resident review requirements are, thus, different, but overlapping.

The physician certification requirements, located at 42 CFR 456.260, 456.270, 456.271, 456.360, and 456.372, require that a physician certify each Medicaid recipient as needing the level of care provided by the facility prior to admission or prior to payment for SNF/ICF services. This level of care need must be certified by a physician based on an evaluation and must be recertified every 60 days. Similarly, for payment for SNF services under Medicare, physician certification of the need for that level of care is required at 42 CFR 424.20. Recertification of the need for SNF care is required by the 14th day and every 30 days thereafter. The statutory basis for these physician certification and recertification requirements is section 1902(a)(44) of the Act.

The professional review and inspection of care requirements in section 1902(a)(31) of the Act are located in part 456, subpart I. These requirements provide for—

- With respect to each Medicaid recipient, a written plan of care prior to admission or authorization of benefits and independent professional review, including medical evaluation, which periodically reviews the need for SNF or ICF services;

- With respect to each SNF or ICF, periodic on-site inspections of care by professional review teams, including the adequacy of the services available to meet each recipient's current health needs and promote his or her maximum physical and mental well-being; the necessity and desirability of the resident's continued placement in the facility; and the feasibility of meeting

the recipient's health care needs through alternative institutional or noninstitutional services; and

- Full reports to the State Medicaid agency by the independent professional review teams of each inspection of care together with any recommendations.

Section 1902(a)(30)(A) of the Act also provides for utilization control within the facility by medical and professional personnel who are not themselves directly responsible for the care of the recipient involved. Facility review committees must review a sample of their patients who are Medicaid recipients.

All three of the existing Medicaid utilization control mechanisms will no longer be required of NFs, effective October 1, 1990, as a result of OBRA '87. Section 4212(e)(1) abolishes the requirements for physician certification and recertification; section 4212(d)(2) removes the requirement for professional review and inspections of care; and section 4211(h)(3) removes the requirement for utilization control by the facility's utilization review committee.

Section 4211(a) of OBRA '87 redesignates existing section 1919 of the Act as section 1922, and adds a new section 1919 to the Act. With respect to new admissions occurring on or after January 1, 1989, new section 1919(b)(3)(F) of the Act prohibits a Medicaid NF from admitting any new resident who has MI or MR (or a related condition), unless the State mental health authority (in the case of a person with MI) or State mental retardation or developmental disability authority (in the case of a person with MR) has determined that the prospective resident, because of his or her physical and mental condition, requires the level of services provided by a nursing facility. In addition, if the appropriate State authority determines that the individual needs a nursing facility level of care, the State authority must further determine whether the individual needs active treatment for the MI or MR. The responsibilities placed on NFs by section 1919(b)(3)(F) of the Act are contained in the February 2 regulations at § 463.20(f). The responsibilities placed on States are contained in section 1919(e)(7) of the Act. These State responsibilities are the subject of this proposed rule.

Section 1919(e)(7)(A) of the Act requires the State to have a preadmission screening program, consistent with the requirements of section 1919(b)(3)(F), in operation by January 1, 1989. Section 1919(e)(7)(B) establishes State requirements for annual resident review. With respect to

all current residents with MI or MR who were admitted prior to January 1, 1989, section 1919(e)(7)(B)(iii) of the Act requires the State mental health authority (in the case of the person with MI) or the State mental retardation or developmental disability authority (in the case of a person with MR) to take the following actions. First the appropriate State entity must have reviewed and determined by April 1, 1990, whether or not the resident, because of his or her physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 or of an institution for mental diseases (IMD) providing medical assistance to individuals 65 years or older, in the case of residents with MI, or the level of services of an ICF/MR, in the case of residents with MR. Secondly, regardless of the outcome of the nursing facility level of care determination, the appropriate State entity must determine whether or not the current resident requires active treatment for his or her MI or MR. In the case of current residents with MI, the Act further specifies that the determinations made by the State mental health authority must be based on an evaluation performed by a person or entity independent of that authority.

Section 1919(e)(7)(B)(iii) of the Act also requires that as of April 1, 1990, reviews and determinations be repeated on at least an annual basis on all NF residents who have mental illness or mental retardation regardless of whether they were first screened under preadmission screening or under an initial resident review.

Section 1919(e)(7)(C) provides for the disposition of residents who are determined under section 1919(e)(7)(B) not to require NF services. In dealing with residents whose only need is for active treatment, the Act distinguishes between short- and long-term residents. Residents who have continuously resided in a NF for 30 months or more are allowed the choice of staying in the NF with active treatment provided or arranged for by the State, of moving to a more appropriate institutional setting such as an ICF/MR or an institution for mental diseases, or of receiving services in an alternative appropriate non-institutional setting. Shorter-term residents must be relocated in accordance with the transfer and discharge provisions of section 1919(c)(2) of the Act (implemented by § 483.12(a)) and provided active treatment by the State. Residents who

need neither NF services nor active treatment, regardless of the length of their stay in the NF, must also be discharged in accordance with section 1919(c)(2) of the Act (implemented by § 483.12(a)). The statutory provisions of 1919(e)(7)(C) are discussed more fully below under the provisions of this rule. (See discussion of § 483.118).

Other relevant statutory provisions include:

- Section 1919(e)(7)(D) of the Act, which provides for denial of payments to a State for NF services furnished to an individual for whom preadmission screening or annual resident review determinations are required but for whom determinations have not been made.

- Section 1919(e)(7)(E) of the Act which permits States to submit alternative disposition plans (ADPs) for residents determined under section 1919(e)(7)(B) of the Act not to need NF services but to need active treatment. If by April 1, 1989, the State has entered into an agreement relating to the disposition of such residents and remains in compliance with this agreement, the State may have an extended time period as identified in the ADP for appropriately placing these individuals in other settings or providing active treatment to them, or both. Without an approved ADP, the State is required under section 1919(e)(7)(C) of the Act to have relocated or provided active treatment, or both, to all such residents by April 1, 1990.

- Section 1919(e)(7)(F) of the Act, which requires each State, as a condition of approval of its Medicaid State plan to have in effect, as of January 1, 1989, an appeals process for individuals adversely affected by determinations under PASARR.

- Section 1919(e)(7)(G) of the Act which provides definitions for mental illness, mental retardation and active treatment. These are discussed more fully under the provisions of this rule. (See discussion of §§ 483.102 and 483.120).

- Sections 1819(b)(3)(E) and 1919(b)(3)(E) of the Act, which require coordination between the State's PASARR process and the NF's resident assessment process as described in sections 1819(b)(3)(A)-(D) and 1919(b)(3)(A)-(D). As of October 1, 1990, the NF's resident assessment process must use an instrument based on the minimum data set and specified by the State Medicaid agency. The purpose of this requirement is to avoid duplicative testing and effort to the maximum extent practicable.

- Section 1919(f)(8) of the Act, which requires the Secretary to develop, by no later than October 1, 1988, minimum criteria for States to use in making the required determinations on new admissions and current residents, and procedures to appeal such determinations for individuals adversely affected. However, section 1919(e)(7)(A) of the Act requires the States to have a preadmission screening and annual resident review program in operation by the effective dates regardless of whether the Federal criteria are available.

Development of Criteria

In order to offer maximum guidance to States and provide as much technical assistance as possible, we began developing draft criteria through an exhaustive consultation process in the Spring and Summer of 1988. In September, 1988, we made available a draft, commonly referred to as the "Third Draft," which reflected the results of our consultation. These criteria were again revised based on further experience, analysis, and advice and were published in the State Medicaid Manual (HCFA Pub. 45-4) in May 1989 (Transmittal No. 42). In order to offer the public further opportunity to comment on these criteria before they are used as the basis for monitoring State performance of the PASARR function, we are issuing this proposed rule. After analyzing the comments we receive, we will issue a final regulation, the specific requirements of which, to the extent they reflect administrative discretion, will then be binding on States for prospective periods. Statutory requirements are currently binding on States in accordance with the statutory effective date language. We will also subsequently revise the program instruction, based on the final rule. In the interim, these criteria are advisory to the States. States are free to devise PASARR programs that meet the requirements of the law.

It is worth noting that the Act, as amended by OBRA '87, did not require issuance of final regulations, only criteria. Nevertheless, the Act clearly requires that the States implement the preadmission screening requirements by January 1, 1989 and complete the initial reviews on residents who entered NFs prior to the commencement of preadmission screening by April 1, 1990, even in the absence of Federal criteria. This position was upheld in Federal court in May, 1989, when the judge removed a preliminary injunction in *Idaho Health Care Assoc., et al. v. Sullivan*, No. 88-1425 (D. Idaho May 11, 1989) and, soon after, in *Rayford, et al.*

v. *Bowen*, No. 89-0418 (W.D. La. May 25, 1989). As a result of a provision (section 6901(c)) of OBRA '89, we are now required to publish these criteria as a proposed rule within 90 days of enactment. Despite this deadline, States continue to be bound by the statutory requirements to perform PASARR activities.

III. Proposed Revisions to Rules

General Rule

PASARR is an unusual program which clearly requires a cooperative effort among State agencies. The PASARR provisions are one of the few instances in which Congress has granted responsibility for a portion of the administration of a Medicaid program requirement to an agency of State government other than the Medicaid single State agency. The other instance of an administrative separation of powers is the survey and certification function, which is the responsibility of the State health department or other licensing body within the State. Because of the special character of PASARR, it is essential to establish in Medicaid regulations the interrelationship of the separate agencies within the State government.

Since the State Medicaid agency is charged with administration of the State plan, it is accountable to HCFA for assuring that the State mental health and mental retardation authorities, who are charged with making the required determinations, fulfill their statutory responsibilities and comply with these regulations, and that the State's PASARR program operates as it should, in accordance with the statute and these regulations. If the program does not operate properly, the State Medicaid agency bears ultimate responsibility. While not an all-inclusive list, we enumerate below a number of specific responsibilities that fall to the State Medicaid agency as part of its role as the administrator of the State plan of which the PASARR requirements are a part. The State Medicaid agency is responsible for the funding of PASARR activities and, as such, has accounting, auditing and enforcement functions to perform. It must see that no individual with MI or MR is admitted to a NF unless he or she has been screened and found to be appropriate for placement or that no resident with MI or MR remains in a NF unless these rules permit continued residence. It must withhold Medicaid payment for NF services for any individual with MI or MR who may not receive them under these regulations. In identifying individuals who should have been screened or

reviewed but were not, the State survey and certification agency cooperates in the operation of the PASARR program. The State Medicaid agency must also ensure that the resident assessments conducted by the NF are coordinated with the State's PASARR evaluations as required by section 1919(b)(3)(E) of the Act. We anticipate that coordination complexities may arise since the State Medicaid agency has the responsibility of specifying the instrument, based on the uniform minimum data set that will be used by NFs in the State but shares responsibility for developing the instruments to be used for PASARR evaluations with the State mental health and mental retardation authorities.

Additionally, the State Medicaid agency must ensure that individuals who must be discharged under section 1919(e)(7)(C) of the Act are discharged; but it may need to work with the State mental health and mental retardation authorities in order to develop the needed alternative placements for individuals who must be relocated and to provide the statutorily required active treatment services for those individuals who are determined to need them. Ensuring adherence to the terms of an approved alternative disposition plan (ADP) is also the responsibility of the State Medicaid agency although it should work cooperatively with the State mental health and mental retardation authorities in carrying out the plan.

Since the provision of active treatment to individuals who are determined by the State mental health and mental retardation authorities to need it is a State plan requirement, the State Medicaid agency has responsibility for ensuring that it is provided and for monitoring its provision. The actual delivery of these services may be performed by the State mental health and mental retardation authorities, but the State Medicaid agency is ultimately responsible for seeing that the State meets this obligation under its State plan.

Because of the complexity of the interagency arrangements that are called for by PASARR, we are adding a new § 431.621. This new section follows immediately after the requirement that the State Medicaid agency have an interagency agreement with the State mental health authority or mental institutions if the State plan includes Medicaid services in institutions for mental diseases for recipients aged 65 or older. Section 431.621 would require that the State Medicaid agency have an interagency agreement with the State mental health and mental retardation

authorities specifying the respective roles of each agency in operation of the State's PASARR program. We would further specify the basis and purpose for requiring an interagency agreement as a State plan requirement and stipulate the provisions that are required in such an agreement. Among these are requirements for joint planning, access to records, exchange of information concerning individuals with MI or MR, and other provisions that ensure that the interagency agreement is consistent with all requirements of §§ 483.100-483.136.

We do not believe that we need to amend section 431.10(e), which prohibits delegation of the single State agency's authority to exercise administrative discretion in the administration or supervision of the State plan to other than its own officials because the making of PASARR determinations is not a statutory responsibility of the State Medicaid agency. Absent limitations upon the ability to delegate, an agency can, as a general principle, delegate authority that belongs to it. Authority for making PASARR determinations, however, does not belong to the State Medicaid agency. Therefore, the State Medicaid agency cannot delegate what it does not have. We are continuing to study the Medicaid regulations to determine the need for conforming changes to accommodate PASARR requirements. We specifically solicit comments on this topic.

To comply with the PASARR requirements of OBRA '87 and OBRA '89, we propose to retitle part 483 as "Requirements for States and Long Term Care Facilities" and to establish new §§ 483.100 to 483.138. The new part name appropriately reflects the fact that States as well as long term care facilities must meet our requirements.

In § 483.100 we would identify the basis of these requirements governing the State's responsibility for PASARR. These requirements are based on section 1919(e)(7) of the Act.

In § 483.102 we would specify to whom the PASARR program, which the State must operate, applies. Our interpretation is that the PASARR program must apply to all individuals with MI or MR who apply to reside in a Medicaid-certified NF, regardless of the source of payment for the NF services. This interpretation is based on the fact that, in the absence of language in the statute limiting the scope of PASARR (e.g. "for individuals eligible for services under title XIX" or "for persons receiving benefits under this title"), we must rely on a plain reading of the statutory language which states that

preadmission screening applies to "any new resident," and that annual resident review applies to "each resident of a nursing facility" if the applicant or resident has mental illness or mental retardation. Therefore, in § 483.102(a) we would specify that this subpart applies to the screening or reviewing of all individuals with MI or MR, who apply to or reside in Medicaid-certified NFs, regardless of the source of payment for the NF services.

Because an institution for mental diseases (IMD) can be a NF, and all NFs are subject to the PASARR requirements, we believe NFs that participate in Medicaid as IMDs are subject to PASARR. We note that the definition of a NF set forth in section 1919(a) of the Act appears to be somewhat inconsistent with the definition of an IMD in that it states that a NF is an institution that "is not primarily for the care and treatment of mental diseases." We believe, however, that the best reading of these two definitions is that a NF can be both an NF and an IMD. In such situations, the NF maintains its status as a certified NF, but the IMD classification applies. That is, when NFs provide IMD services for persons over 65 years of age or inpatient psychiatric services for individuals under 21, we consider these facilities in the context of these benefits even though they meet NF requirements. For individuals aged 22 to 64, residence in an IMD precludes them from receiving any Medicaid benefits.

The PASARR requirements do not currently apply to swing beds because the existing swing bed regulations at 42 CFR 482.66(b) list those SNF requirements which swing beds must meet and would need to be revised to include PASARR requirements before they would be applicable. In another regulation we will deal with swing bed requirements.

Definitions

In § 483.102(b), we would include the definition of mental illness as it is specified in section 1919(e)(7)(C)(i) of the Act. We would consider an individual to be mentally ill if he or she has a primary or secondary diagnosis of mental disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, third edition, and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder). We would consider an individual to have dementia if he or she has a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders, third edition, and does not have MR. (See later preamble discussion

of the Level I process under § 483.128(a).)

We note that the Act excludes dementias from the definition of mental illness but not from the definition of mental retardation. Therefore, an individual with a primary diagnosis of dementia and any diagnosis of mental retardation or a related condition would still have to be subjected to PASARR by virtue of having a diagnosis of mental retardation or a related condition. Section 483.102(b)(2)(ii) indicates that a person cannot be viewed as having dementia, for purposes of the exclusion, if he or she has mental retardation (or a related condition).

Also in § 483.102(b) we would provide that an individual is considered to have mental retardation if he or she has a level of retardation (mild, moderate, severe or profound) described in the American Association on Mental Deficiency's Manual on Classification in Mental Retardation (1983), or a related condition, as described in section 1905(d) of the Act and regulations at § 435.1009. We are supplying this definition because the Act does not define MR. It simply states that a person is mentally retarded if the person is mentally retarded or has a related condition as described in section 1905(d). Section 1905(d), however, only defines an intermediate care facility for the mentally retarded (ICF/MR), not mental retardation. ICFs/MR, under section 1905(d), are institutions whose primary purpose is to provide health and rehabilitative services to individuals with MR or related conditions.

In § 483.104 we would require as a condition for approval of the State plan, that the State must operate a PASARR program that meets the requirements of §§ 483.100-483.136. Failure by a State to operate a PASARR program in accordance with these requirements could lead to compliance actions against the State under section 1904 of the Act. Particularly, the failure to implement the clear statutory mandates such as subjecting all categories of individuals with MI or MR (Medicaid, Medicare, and private pay) to PASARR and requiring NFs to not admit unscreened individuals would be viewed as a failure to meet Medicaid State plan requirements. Compliance proceedings could result in loss of FFP in the State's Medicaid nursing home program until compliance is achieved.

In § 483.106(a) we would specify, in general terms, which individuals are subject to preadmission screening and which are subject to annual resident review. Also, we would specify when these activities must be done, based on

the timeframes established by the statute. Section 1919(e)(7)(A) and (e)(7)(B) create a schedule by which States were required by January 1, 1989 to have commenced preadmission screening of all individuals with MI or MR who seek entry into NFs as new resident admissions. The statute identifies no start-up date for the initial reviews of NF residents with MI or MR who entered facilities prior to the commencement of preadmission screening. However, all residents with MI or MR who were not subject to preadmission screening must be subjected to initial reviews by April 1, 1990. Thus, States were allowed to phase-in the resident review function, but are required to have reviewed their entire population of NF residents with MI or MR within the 15 month period between January 1, 1989 and April 1, 1990. As of April 1, 1990, the State must require at least annual review of all residents with MI or MR, regardless of whether they were initially screened under preadmission screening or the initial resident reviews. In other words, by April 1, 1990, the State's PASARR program must be running on a routine basis with all new admissions with MI or MR being screened prior to entrance and all continuing residents with MI or MR being subjected to periodic reviews.

Because a number of States have asked us to clarify the term "new resident," we would specify in § 483.106(b) that a new resident is an individual being admitted to any NF in which he or she has not recently resided and to which he or she cannot qualify as a readmission. Such an individual is subject to preadmission screening if he or she has MI or MR. Readmissions to the same NF following a temporary absence for hospitalization or therapeutic leave are not new admissions. These individuals with MI or MR are subject to annual resident review, not preadmission screening. Interfacility transfers, with or without an intervening hospital stay, are new admissions because these individuals are "new" to the admitting facility. Like new admissions, inter-facility transfers are subject to preadmission screening.

Section 483.106(b) (1) and (2), taken together, mean that a new resident is any individual who is not a readmission to the same facility from which he or she has been only temporarily absent. In cases of new admissions, the admitting NF is either unfamiliar with the individual because he or she has never resided in that particular NF or the individual is a former resident who has been absent from the NF long enough that the NF would have reason to

question whether information it may have on the individual is still current. When a new NF is involved (i.e., one in which the individual has never resided), the individual is unquestionably a new admission. When an individual has resided in a particular NF at some time in the past, questions arise.

We are not specifying a definition for "recently resided" or for "temporary absence." Rather, we are leaving it to the State to define these terms. (See the later preamble discussion of temporary absences which may count toward continuous residence under § 483.118). For both types of cases (readmissions versus new admissions and calculations of continuous residence), we believe that the State should develop a consistent policy. If a State has a bed-hold policy, it may choose to use this period to define temporary absence and recently resided for the purpose of determining whether an individual is a new admission or a readmission when the same NF is involved. While we are not requiring that a State use its bed-hold period for this purpose, we believe that any different definition the State develops should be at least as liberal as the bed-hold period. States without a bed-hold policy may wish to develop definitions of temporary absence and recently resided in order to differentiate between new admissions and readmissions.

We are aware that section 1919(c)(2)(D) of the Act, as amended by OBRA '87, refers to readmissions that may occur at a time beyond the time period that we are allowing States to specify as a temporary absence for the purposes of differentiating between new admissions and readmissions and of calculating terms of continuous residence under PASARR. Section 1919(c)(2)(D) of the Act and § 483.12(b)(3) in the February 2, 1989 final regulation which implements it require a NF to establish a written policy under which a Medicaid eligible resident who is transferred from the NF for hospitalization or therapeutic leave but whose period of absence from the facility exceeds the State's bed-hold period will be readmitted to the NF upon the first availability of a semi-private room if, at the time of readmission, the resident requires the services provided by the facility. We believe that the question of whether the resident requires the services of the facility needs to be answered by a new preadmission screening. Therefore, even though the statute speaks of a "readmission," readmissions that occur after the time period established by the State as a temporary absence are, in

fact, new admissions for the purposes of PASARR.

In order to avoid unnecessary duplicative testing, we would permit, however, in the case of an individual who formerly resided in a NF but failed to meet the State's rules for being considered a readmission, a preadmission screening or annual resident review that has been performed within the past year to be updated so long as there has been no significant change in the resident's health status. We would, nevertheless, caution that updates in the case of interfacility transfers or lapsed readmissions and delays in reevaluations at the time of readmission to the same facility (i.e., up to nearly 1 year while awaiting the next ARR) cannot be justified if the hospital admission or interfacility transfer were necessitated by a significant change in the resident's health status which has a bearing on his or her active treatment needs.

For example, if an individual with MI or MR residing in a NF breaks a hip and is sent to the hospital for surgery, he or she could likely be readmitted to the NF for convalescence without the need for reevaluation of the need for NF care or for active treatment. On the other hand, if an individual with MI experiences an acute episode of MI and is transferred to a psychiatric unit in a general hospital or a psychiatric hospital, a change has occurred in his or her mental condition which would raise questions about a change in treatment needs once he or she is ready to return to the NF.

We call attention to the NF requirement at § 483.20 that a change in the resident's health status should precipitate a new facility assessment. Annual resident reviews are similarly required to be done at least annually, but may be required more frequently if a change occurs in the resident's condition. If the facility's new resident assessment indicates that a more immediate annual resident review is warranted, the facility should alert the State mental health authority. Judgment is, therefore, required in determining when updates or delays are appropriate and when a more thorough annual resident review is required.

Section 483.106(c) would specify the purpose of the PASARR program which is to result in the determinations that are described in §§ 483.112 and 483.114. Because there are slight but significant differences between preadmission screening and annual review determinations, it is almost impossible to make accurate general statements applicable to both sets of determinations. Therefore, we are

describing each type of determination in a separate section.

In § 483.106 (d) and (e), we would specify who has responsibility for PASARR evaluations and determinations and would deal with the issue of delegation of responsibility about which we have received many questions. The Act provides that PASARR determinations are the responsibility of the State mental health and mental retardation authorities, each for its respective population. On the other hand, with respect to evaluations, the Act treats the two authorities very differently. It requires that the State mental retardation authority have responsibility for the evaluations upon which its determinations are based but removes the State mental health authority from responsibility for the evaluation of individuals with MI. These evaluations must be performed "by a person or entity independent of the State mental health authority."

In part, because we encouraged the 35 States that had preadmission screening programs in place prior to the enactment of OBRA '87 to build PASARR into their systems rather than jettison existing programs, a number of questions have arisen concerning whether the State mental health and mental retardation authorities may delegate their responsibilities to another agent. In many cases, this has meant delegation to the State Medicaid agency, which usually operated the preexisting preadmission screening program. Our interpretation has been that, absent specific statutory limitations, a grant of authority may generally be delegated or contracted so long as the empowered body retains control over the actions of its agent and ultimate responsibility for the performance of its statutory obligations. We therefore would require that if the State mental health and mental retardation authorities choose to delegate or subcontract their responsibilities, they must, according to the Act, retain ultimate authority over and responsibility for the performance of their statutory obligations. "Delegation" cannot be construed to mean an abdication by an agency of a binding statutory duty or usurpation of it by another agency. Moreover, the State mental health authority cannot delegate, in the sense described above, evaluations of individuals with MI. The responsibility for these evaluations is not theirs to delegate. Another agent must do them. Since the State Medicaid agency is charged with ensuring operation of the State PASARR program, it must see that an independent evaluation agent is used.

In § 483.108, we would specify the relationship of PASARR to other Medicaid processes. Specifically, in § 483.108(a) we would clarify that PASARR determinations made by the State mental health and mental retardation authorities cannot be countermanded by the State Medicaid agency either in the claims process or through other utilization review/control processes. In § 483.108(b) we would require, however, that the State mental health and mental retardation authorities use criteria that are consistent with those contained in applicable regulations or adopted by the State Medicaid agency under the approved State plan.

In § 483.108(c), we would require coordination of PASARR activities with the resident assessment activities required of facilities. To the maximum extent practicable, in order to avoid duplicative testing and effort, the PASARR must be coordinated with the routine resident assessments required by § 483.20(b). In the State Medicaid Manual, Transmittal No. 42, we suggested that data gathered in performing a preadmission screening on an individual with MI or MR could be used in performing the first resident assessment once he or she is admitted to the NF. Similarly, the facility's routine assessments, which must be performed at least annually but may be required more frequently if a change occurs in the resident's condition, should trigger an annual resident review on individuals who are identified as having MI or MR. Data collected as part of the facility's routine assessments may be used by the State in performing the annual resident review.

In § 483.110, we would provide for out-of-State arrangements relating to PASARR. We would specify that for an individual eligible for Medicaid, the State in which the individual is a legal resident must pay for the PASARR and make the required determinations, in accordance with § 431.52(b)(1), which specifies requirements for furnishing Medicaid services to State residents who are absent from the State. For non-Medicaid individuals, the State in which the facility is located pays for the review unless the States have mutually agreed to other arrangements. We propose that a State may include arrangements for PASARR in its provider agreement with an out-of-State facility or in its reciprocal interstate agreement. We do not, however, propose to require either type of agreement.

Preadmission Screening (PAS)

We would require in a new § 483.112, Preadmission Screening of Applicants for Admission to Nursing Facilities, that for each NF applicant with mental illness or mental retardation, the State mental health or mental retardation authority (as appropriate) must determine, in accordance with § 483.130, whether, because of the applicant's physical and mental condition, he or she requires the level of services provided by a NF. Also, if the individual with mental illness or mental retardation is determined to require an NF level of care, the State mental health or mental retardation authority (as appropriate) must also determine, in accordance with §§ 483.134-483.136 (as appropriate), whether the individual requires active treatment for the mental illness or mental retardation, as defined in § 483.120. As noted in the general requirements for PASARR in § 483.106, all determinations by the State mental health authority are to be based on evaluations performed by a person or entity independent of the State mental health authority.

To this preadmission screening requirement, we would also add a timeliness standard in § 483.112(c), which would require that the State mental health or mental retardation authorities make preadmission screening determinations in writing within 7 working days of referral by the NF, hospital discharge planner or whomever is responsible under the State's system for identifying individuals with MI or MR and for referring them to the State mental health or mental retardation authority for preadmission screening. (See the preamble discussion of § 483.118(a) concerning the Level I identification process.) Telephone calls may be used to announce determinations within the 7 working days to permit speedier admissions or the making of other arrangements if NF admission is denied so that applicants to NFs do not have to await the arrival of paperwork.

We specifically solicit comments on this timeliness standard. We are aware that circumstances vary around the country. We also recognize that States may have acquired experience in conducting these reviews which bears on the issue of a timeliness standard. We have proposed this period because we do not want individuals seeking admission to have to wait an unduly long time to receive results of the PAS; however, we recognize that experience may dictate use of an alternative standard of timeliness. We, therefore,

welcome comments as to the reasonableness of this requirement.

Annual Resident Review (ARR)

We would require in a new § 483.114, Annual Resident Review of NF Residents, that the State's program comply with the requirements of section 1919(e)(7)(B) of the Act. For residents with MI, we would require the State mental health authority to determine, based on the resident's physical and mental condition, whether the resident requires the level of services provided by a NF, an inpatient psychiatric hospital for individuals under age 21, as described in section 1905(h) of the Act, or an institution for mental diseases providing medical assistance to individuals age 65 or older. Regardless of the outcome of the first determination, the State mental health authority would also need to determine whether the individual needs active treatment for MI. As noted in the general requirements for PASARR in §§ 483.106(d), all determinations by the State mental health authority are to be based on evaluations performed by a person or entity independent of the State mental health authority.

For persons with MR, we would require the State mental retardation authority to determine whether the resident, because of his or her physical or mental condition, requires the level of services provided by a NF or by an intermediate care facility for the mentally retarded (ICF/MR). Additionally, regardless of the outcome of the first determination, the State mental retardation authority would need to determine whether the resident needs active treatment.

In § 483.114(c), we would prescribe the frequency of resident reviews. As of April 1, 1990, a review and determination must be conducted for each resident of a Medicaid NF who has MI or MR at least annually. This requirement for at least annual review applies to all individuals with MI or MR regardless of whether they were originally reviewed under preadmission screening, the initial review provisions, or are subsequently detected through the facility's routine resident assessments. In the State Medicaid Manual, Transmittal No. 42, we suggested that the facility's routine resident assessment process may be used as a means of performing the Level I identification function for continuing residents (Level I is discussed in connection with § 483.128(a), following). More frequent than annual resident assessments by the NF that are precipitated by a change in the resident's physical or mental condition

should trigger more frequent than annual resident reviews by the State. The State, however, is ultimately responsible for ensuring that all residents with MI or MR receive timely reviews.

Additionally, in § 483.114(d) we would repeat the statutory requirement that the first set of reviews of residents with MI or MR who entered Medicaid NFs prior to January 1, 1989 be completed on or before April 1, 1990.

Results of PAS and ARR

We would require in a new § 483.116, Residents and applicants determined to require NF level of services, that, if the State mental health or mental retardation authority determines that a resident or applicant for admission to a NF requires a NF level of services, the NF may admit or retain the individual. If the State mental health or mental retardation authority determines that a resident or applicant for admission requires both an NF level of services and active treatment for the MI or MR, we would permit the NF to admit or retain the individual and we require the State to provide or arrange for the provision of the active treatment needed by the individual while he or she resides in the NF.

The requirement that the State provide or arrange for the provision of active treatment for all individuals who are identified to need active treatment under the PASARR process, whether or not they remain in nursing facilities, is clearly the intent of the Congress. The committee language describing these provisions of the bill makes it clear that the Congress intended this process to result in either appropriate placement outside a nursing facility or provision to the resident in the nursing facility of needed active treatment services. Thus, while a State may have some latitude in refining its procedures relating to admissions to and continued stays in NFs, it must do so with the understanding that it bears the obligation of assuring proper treatment of individuals needing active treatment who are approved for NF admission.

In a new § 483.118, residents and applicants determined not to require NF level of services, we would require in paragraph (a) that if the results of a State's screening for a new admission indicate that a NF level of services is not needed, then the NF must not admit that individual. This means that even if the individual is a private pay or Medicare patient who otherwise has the means to pay for the NF care and chooses to purchase this service, he or she cannot be admitted. If the individual is Medicaid eligible, the NF similarly

may not admit him or her. Moreover, from a payment perspective, NF care is not considered a covered Medicaid service for that individual. As noted earlier in section 483.102, these PASARR requirements apply to all individuals without respect to the method of payment for their care. The result of this fact is that all individuals are subject to these determinations, whether or not they are eligible for Medicaid, and cannot be admitted to a Medicaid certified facility if they have not been determined to need NF services. As provided for in § 483.20(f) in the February 2 rule, the NF cannot admit any individual with MI or MR who has not been determined to be appropriate for NF placement without violating its requirements for participation as a Medicaid-certified facility. Also, when it has determined that an individual with MI or MR does not need NF services, the State mental health or mental retardation authority is not required to complete the remainder of the screening.

In § 483.118(b), we would deal with residents who require neither NF services nor active treatment for MI or MR. Section 1919(e)(7)(C)(iii) of the Act requires that any nursing facility resident who has been determined not to require the level of services provided in a NF and not to require active treatment for mental illness or mental retardation must be discharged from the NF. In accordance with the Act, the State must—

- Arrange for the safe and orderly discharge of the resident from the facility; and
- Prepare and orient the resident for discharge.

(See our later discussion concerning Federal financial participation (FFP) in § 483.122. Also see § 483.12(a) in the February 2, 1989 rule for transfer and discharge rights of residents. These provisions implement section 1919(c)(2) of the Act).

Because, as noted above, these PASARR requirements apply to all individuals without respect to the method of payment for their care, the State must arrange for the discharge of all residents who are determined to need neither NF nor active treatment services, even if these residents are not Medicaid eligible.

For residents of NFs who are determined not to require NF services but to require active treatment, we would follow section 1919(e)(7) of the Act, which differentiates between individuals who have resided in a NF for 30 months or longer and those who have resided in a NF for fewer than 30 months. Section 1919(e)(7)(C)(i) of the Act provides that in the case of an

individual who has resided in a NF for at least 30 months before the date of the review determination that he or she does not require the level of services provided in a NF, but requires active treatment for MI or MR, the State must in consultation with the resident's family or legal representative and caregivers, do the following:

- Inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident;
- Offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting;
- Clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility, including its effect on readmission to the facility; and
- Regardless of the resident's choice of placement, provide for, or arrange for the provision of active treatment for the mental illness or mental retardation.

While the options that must be presented to long-term residents consist exclusively of Medicaid covered services, all long-term residents with MI or MR who need only active treatment, regardless of the method of payment for their care, must be offered these choices. If non-Medicaid eligible individuals in this group elect to stay, their continued stay is funded by whatever means it was paid for prior to the determination (i.e., the right to stay does not carry with it the right to Medicaid coverage). This statutory provision would be implemented in § 483.118(c)(1).

The Act contains other provisions that apply to short-term residents of NFs who do not require NF services but do require active treatment for mental illness or mental retardation. Section 1919(e)(7)(C)(ii) provides that in the case of an individual who has not continuously resided in a NF for at least 30 months before the date of the determination, and has been determined not to require the level of services provided by a NF, but to require active treatment, the State must, in consultation with the resident's family or legal representative and caregivers—

- Arrange for the safe and orderly discharge of the resident from the facility;
- Prepare and orient the resident for discharge; and
- Provide for, or arrange for the provision of active treatment for mental illness or mental retardation.

We note that the requirement that the State must arrange for the discharge of short-term residents with MI or MR who

do not require NF services applies, as explained earlier, to all residents without regard to the method of payment for their care. We would implement this provision in § 483.118(c)(2).

A delay in application of certain aspects of § 483.118(c) (1) and (2) is allowed if the State has in effect an approved alternative disposition plan (ADP) and is complying with the terms of this agreement. Alternative disposition plans are permitted by section 1919(e)(7)(E) of the Act. Section 483.118(c) allows a State and the nursing facility to be considered in compliance with the PASARR requirements if, before April 1, 1989, the State and the Secretary have entered into an agreement relating to the disposition of residents who do not need NF services but do need active treatment and the State is in compliance with the agreement. Section 1919(e)(7)(E) further states that an ADP agreement may provide for the disposition of these residents after April 1, 1990, the date by which all initial reviews of residents who entered the NF prior to the start of preadmission screening must be completed.

A State with an approved ADP gains extra time for only two functions:

- Relocating residents to alternative settings residents; and
- Providing active treatment.

An ADP does not give a State extra time to complete the initial reviews that are required under section 1919(e)(7)(B) of the Act.

Congress recognized that the problem of inappropriate placements in the past could not be solved overnight, but it did require that the State start taking steps to solve it. By April 1, 1990, States should know precisely who is in their ADP population:

- Individuals in need of relocation (i.e., long-term residents, identified in § 483.118(c)(1), who choose not to remain in the NF but to go to another more appropriate institutional or non-institutional setting and short-term residents, identified in § 483.118(c)(2), who do not have the choice of staying in the NF and must be relocated to a more appropriate setting); and
- Individuals in need of active treatment (i.e., all residents who are identified as not needing NF but needing active treatment, wherever they are, whether in the NF, another institutional setting, or in the community).

Alternative placements can take various forms: for instance, beds in an IMD, a psychiatric hospital, an ICF/MR, a group home, or another type of supervised living setting. Similarly, the means of delivering active treatment

services may take various forms. Some individuals in the ADP population will have to receive active treatment in the NF. Others may be able to leave the NF to receive these services. Still others who will be moved to community settings will have to receive active treatment there. The extra time allowed by an ADP is for working out the logistics involved in creating placement slots and developing delivery systems for active treatment services. Logistical problems may include requesting and obtaining legislative appropriations, securing certifications of need, submitting waivers to HCFA, locating existing or building new housing units, or hiring and training staff.

In response to Congress' offer, 46 States submitted ADPs timely and had them approved by HCFA by April 1, 1989. States without approved ADPs are responsible under the statute for not only having reviewed all continuing NF residents, but also for having relocated all who need or choose to move and for having commenced, by April 1, 1990, the provision of active treatment services to those determined to need them.

Because questions have been raised concerning the meaning of "continuously residing in a NF" we would clarify in § 483.118(c)(4) that for the purposes of establishing length of stay in a NF, the 30 months or longer of continuous residence in a NF is calculated back from the date of the annual resident review determination which finds that the individual is not in need of NF level of services. Moreover, we would specify, consistent with the legislative history (H.R. Rep. No. 391, 100th Cong., 1st Sess. 461 (1987)) that the continuous residence may include temporary absences for hospitalization or therapeutic leave and may include consecutive residences in more than one NF.

We are not specifying a definition of "temporary absences" for hospitalization or therapeutic leave because we wish to preserve States' flexibility. Many States have bed-hold policies while others do not. States may wish to use their bed-hold time frame in defining a temporary absence but we do not require them to do so. In fairness to residents, however, we believe that a State's definition of a temporary absence should be at least as liberal as its bed-hold period. Also, we believe that, in order to abide by Congressional intent, States without bed-hold policies should establish rules allowing for some amount of interruption of a NF stay for hospitalization or therapeutic leave when calculating whether a resident qualifies as a long-term resident.

Active Treatment

As indicated earlier, for individuals who are determined by preadmission screening to need NF services, the State program must make a determination of the individual's need for active treatment of the MI or MR. For current NF residents, the State must determine if active treatment is needed independent of the need for NF services. Section 1919(e)(7)(G)(iii) of the Act does not define the term, active treatment, indicating only that it does not include, in the case of a resident of a NF, services within the scope of services that the facility must provide or arrange for its residents under 1919(b)(4). (These required NF services are nursing and related services and specialized rehabilitative services, medically-related social services, pharmaceutical services, dietary services, an activities program, and dental services.) Active treatment is, thus, not a NF service and its provision is not the NF's responsibility. Responsibility for provision of active treatment, as discussed below, lies with the State. The two terms are, as a result of the statutory language, mutually exclusive. However, as a practical matter, individual needs cannot be assessed piecemeal, nor can treatment of individual needs be separated, service-by-service, into NF care and active treatment. The only reasonable way to implement this provision is to view the active treatment services an individual requires as services that wrap around any NF services the individual needs and, combined with it, create the therapeutic environment needed by the resident.

Section 1919(e)(7)(G)(iii) of the Act states that the term "active treatment" has the meaning given it by the Secretary in regulations. While Congress did not specify whether it meant existing or future regulations, the definitions contained in existing regulations are relatively narrow, as explained below. Moreover, the Act clearly envisions that not all individuals with MI or MR will need active treatment. Hence, the question, "Does the individual need active treatment?" If the question could only be answered in the affirmative, there would be no point to asking the question. If Congress believed that all individuals with MI or MR needed active treatment, it would presumably have simply required that active treatment be provided to all individuals with MI or MR. Because Congress chose, instead, to ask the question, we believe it intended a definition of active treatment that is

more restrictive than an all-inclusive category of mental health services which anyone with any mental disorder listed in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, Revised (DSM-III-R), however mild, might need.

For the normal NF population (i.e., those individuals with MR or MI who do not need active treatment and other individuals who do not have MR or MI but do have some mental health needs), Congress made provisions for mental health services. In describing the scope of services and activities under the NF's plan of care, section 1919(b)(2) of the Act requires that the plan of care describe a resident's psychosocial needs and requires that the NF provide services and activities to attain or maintain the highest practical physical, mental, and psychosocial well-being of each resident in accordance with the plan of care. Among all the services that a NF must provide, section 1919(b)(4) of the Act particularly singles out nursing and related services, specialized rehabilitative services, medically-related social services and an on-going program of activities to reemphasize that all of these services must be designed to attain or maintain the highest practical physical, mental, and psychosocial well-being of each resident.

We note that commenters to the February 2, 1989 rule believed it was essential that we differentiate between active treatment for mental illness and the regular mental health and psychosocial services a resident requires and is entitled to receive as NF services. We agree and plan to incorporate commenters' suggestions that we add psychiatric rehabilitation to the list of specialized rehabilitative services that the facility must provide to residents who need them, thus making these services NF services under Medicaid. We expect to discuss, in a final regulation that responds to comments on the February 2, 1989 rule, the types of activities we believe are commonly understood to be included among the mental health and psychiatric rehabilitative services that are within the scope of a NF. We also plan to clarify in that rule that specialized psychiatric rehabilitation is not active treatment. We view specialized psychiatric rehabilitation as providing intermittent or maintenance services to individuals with mental illness who have been determined under a State's PASARR process to need NF care and not need active treatment. Residents who are determined under PASARR to need both NF services and active

treatment will likely need to receive such NF services as medically related social services, an activities program, and psychiatric rehabilitation as part of their plans of care. These services will be inadequate to meet their total needs. The State will have to provide or arrange for the provision of additional services to raise the level of intensity of services from the NF level to a level analogous to that which the resident would receive in a higher level of care such as a psychiatric hospital or an ICF/MR.

In revisions to the February 2 rule, we also intend to amend the resident assessment sections of that rule to require mental status evaluations so that baseline data that are needed to develop the plan of care will be developed. In addition, in keeping with our focus on outcomes of care, we expect to require in the quality of care sections of that rule that identified mental health needs be met.

Between the long term care facility requirements of the other regulation and the State requirements proposed here, we believe we are developing a stance that is faithful to the statute which both clearly indicates at sections 1819 and 1919(b) (2) and (4) that residents' mental health needs must be served by NFs and at section 1919(e)(7)(G)(iii) that active treatment services are outside the scope of nursing facility mental health services.

In this rule we would define active treatment in § 483.120 by providing separate definitions for active treatment for MI and for MR. In the State Medicaid Manual, Transmittal No. 42, we suggested a combined definition of active treatment for both groups; however, we have decided to return to separate definitions for several reasons. First, the needs of the two groups are relatively different, thus, making a combined definition difficult to construct. Secondly, the character of the two conditions is different. MR is a stable condition whereas MI is frequently transitory or intermittent, requiring frequent rediagnosis or reevaluation as part of the treatment. Individuals with MI do not form a fixed population the way persons with MR do.

Chiefly, however, our decision to return to separate definitions is motivated by the desire to use in this context the same definition of active treatment published as a final rule on June 3, 1988 (53 FR 20448) in connection with the conditions of participation for intermediate care facilities for the mentally retarded (ICFs/MR). 42 CFR 435.1009 defines "active treatment in intermediate care facilities for the

mentally retarded" as, "treatment that meets the requirements, specified in the standard concerning active treatment for intermediate care facilities for persons with mental retardation under section 483.440(a) of this subchapter."

By contrast, a comprehensive definition of active treatment for mental illness does not currently exist in the Medicaid regulations although the rudiments of such a definition do exist at 42 CFR 441.154 and following sections for inpatient psychiatric services for individuals under age 21 (See 441.150-441.156). Active treatment for mental illness is somewhat more thoroughly defined and described for inpatient services in psychiatric hospitals under Medicare, not in regulations, but in the Medicare hospital and Part A manuals (sections 212.1-212.2 and 3102.1 respectively).

Drawing upon these two sources for a comprehensive definition, we would define active treatment for persons with MI in § 483.120(a)(1) to mean the continuous and aggressive implementation of an individualized plan of care that is developed under and supervised by a physician in conjunction with an interdisciplinary team of qualified mental health professionals; that prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of severe mental illness, which necessitates supervision by trained MI personnel; and that is directed toward diagnosing and reducing the resident's psychotic symptoms that necessitated institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the level of need for mental health services to below the active treatment level of services at the earliest possible time. Although we are not specifying requirements at this point, we would expect that the interdisciplinary team of qualified mental health professionals administering the active treatment program for a person with MI would have a composition and qualifications similar to those required at § 441.156 for the team providing inpatient psychiatric services to individuals under age 21 (with the deletion to the reference in § 441.156(b) to competence in child psychiatry and addition of a reference to general psychiatry).

For persons with MR, we are defining active treatment by cross-referring to the active treatment requirements used for the ICF/MR program at § 483.440(a)(1).

We would clarify in § 483.120(b)(1) that active treatment for persons with MI does not include intermittent or periodic psychiatric services for residents who do not require 24-hour supervision by qualified mental health personnel. For persons with MR, we have already clarified at § 483.440(a)(2) that active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program. In § 483.120(b)(2), we cross-refer to this portion of the ICF/MR regulations.

In § 483.120(c) we would specify who must receive active treatment and who must provide it. The State must assure that active treatment is furnished in accordance with these regulations to all NF residents with MI or MR whose needs are such that 24-hour supervision, treatment and training by qualified mental health or mental retardation personnel is necessary, as identified by the screening provided in §§ 438.130, or 483.134 and 483.136.

In § 483.120(d), we would require that the NF must provide mental health services including specialized psychiatric rehabilitation (which are of a lesser intensity than active treatment) to all residents who need such services. Because the Act, at section 1919(e)(7)(G), excludes active treatment from NF services, the NF cannot be held responsible for providing active treatment to individuals who are determined to need it and who are admitted or allowed to stay in the NF.

We believe that active treatment services can be delivered in the NF setting only with difficulty because the overall level of services is not so intense. If the State's PASARR program determines that an individual with mental retardation or mental illness may enter or continue to reside in the NF, even though he or she needs active treatment, and the individual does so, then the State must provide or arrange for the provision of services to raise the level of intensity of services from the NF level of mental health and psychiatric rehabilitation services to the active treatment level. Given the definition of active treatment we are proposing for MI, however, we expect that few individuals with MI who are found appropriate for NF placement will be found also to need active treatment. We expect that a much larger group of applicants and residents with MI will need mental health services of a lesser intensity than active treatment connotes. Because of the coordination required between PASARR evaluations

and resident assessments in § 483.108(d), PASARR findings that indicate a need for mental health services which are less intensive than active treatment must be reflected in the resident assessment performed by the facility and must be incorporated into the individual's plan of care.

We base the use of the narrow definition of active treatment for mental illness presented in § 483.120 upon the following factors:

- **Statutory basis.** The Act clearly envisions that some individuals with MI will not require active treatment. The Act further indicates that we are to look to existing regulatory definitions in establishing a new one by regulation.

- **Existing regulatory and programmatic instructional basis.** This narrow definition of active treatment is consistent with and grows out of the active treatment provisions applicable to the inpatient psychiatric services for individuals under age 21 and to psychiatric hospitals under Medicare. A similarly narrow definition of active treatment was also proposed in the State Medicaid Manual, Transmittal No. 42.

- **Established practice.** Active treatment for MI, like active treatment for MR, is a "term of art" among professionals practicing in the field. For MI, the term is generally accepted as being limited to individuals who are experiencing acute episodes of severe mental illness that requires 24-hour supervision by trained mental health personnel. As noted earlier, MI, unlike MR, is frequently a transitory or intermittent diagnosis. Even when MI is a current diagnosis, it can often be managed successfully through maintenance drugs and periodic therapy. Only during acute episodes, does the individual with MI require the intensity of intervention that active treatment commonly connotes. While the services provided may be the same in both instances, mental health professionals point out, the critical difference between active treatment and "regular" mental health services lies in the level of intensity.

- **Advice of consultants.** Psychiatrists and other individuals in the mental health advocacy and provider groups who supplied us with advice and comment in the course of developing the current operating instructions universally and strongly urged that we retain the narrow definition of active treatment employed in the Medicaid and Medicare programs for inpatient psychiatric facilities. This same constituency voiced identical views on the relevant sections of the February 2,

1989 rule. We therefore anticipate widespread support of this definition from these groups.

We note, however, that since existing provisions in regulations concerning active treatment for MI under the psychiatric services for individuals under age 21 are not as detailed as those for the ICF/MR program and, in the case of the Medicare program, the definition is not spelled out in regulations, but rather in program instructions alone, we have had to develop extensive changes to the regulations. For this reason, we specifically solicit comments on the definition of active treatment for MI we are proposing.

Availability of FFP for NF Services

In § 483.122(a) (1) and (2), we would provide, except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, that FFP is available for NF services provided to Medicaid eligible individuals subject to the requirements of this part only if they have been determined to need NF care under § 483.116(a), or if, as a long term resident, they have been determined not to need NF services but to currently need active treatment under § 483.118(c)(1) and they elect to stay in the NF.

In negative terms, § 483.122(a)(1) means that FFP is not available for NF services furnished to a Medicaid eligible individual with MI or MR who was admitted on or after January 1, 1989 if the State mental health or mental retardation authority failed to conduct a preadmission screening on the individual. Also, on or after April 1, 1990, we would provide that FFP for NF services will not be available for any Medicaid eligible resident with MI or MR who was not subjected to annual resident review as required under these regulations. We base the denial of payment for non-performance of a required preadmission screening or annual resident review on section 1919(e)(7)(D) of the Act.

In addition, with the exception of the long-term resident group to which Congress afforded the choice of staying in a facility (§ 483.122(a)(2)), we would provide that FFP is not available if the State mental health or mental retardation authority has determined that NF services are not needed. The denial of payment for services that are not required is based in section 1919(b)(3)(F) of the Act, which prohibits a State from admitting an individual with MI or MR to a NF who does not require NF services, and the fact that Congress created an exception for long-

term residents in section 1919(e)(7)(C)(i) of the Act. Section 1919(e)(7)(C)(i) provides that a State is not to be denied FFP for NF services for a Medicaid eligible individual who has resided in a NF for at least 30 months before the date of the annual resident review determination who is found to not need NF services, but to need active treatment and who chooses to remain in the NF. If, under these regulations, a short term resident should not be in the NF, we cannot pay for his or her being there.

In positive terms, § 483.122(a)(1) means that for Medicaid eligible individuals with MI or MR who have been screened before entering a NF and have been determined to require NF level of services, FFP is available for NF services, regardless of whether active treatment for the MI or MR is also needed. Section 483.122(a) also means that, for current Medicaid eligible residents who are determined to need NF services, FFP is available regardless of the length of stay in the NF and regardless of a need for active treatment.

We considered, but rejected the idea of specifying in § 483.122(a) that, if a preadmission screening or a timely resident review is not conducted, FFP could be provided for days of care that occur after the date upon which the required determinations are made. This idea would have prevented the State's failure to perform a preadmission screening or a timely resident review on an individual or resident who has MI or MR from resulting in denial of payment for that individual for the NF stay. Under such a provision, payments could begin or recommence once the required resident review was performed. We rejected this idea because we believe that the entire PASARR process would be seriously undermined if payment could be permitted as soon as a review was performed, for instance, within two or three days of admission when preadmission screening never occurred or timely resident review was not conducted. We are therefore taking the position that section 1919(e)(7)(D) of the Act requires denial of FFP for the stay. The statute does not create intermediate sanctions which could be used in case of error on the part of the State.

We would also specify in § 483.122(b) that FFP for NF services cannot remain available if the individual with MI or MR has not been subjected to timely (at least annual) reviews to reevaluate NF and active treatment service needs. While reviews must be performed at least annually, a change in the resident's physical or mental condition may

precipitate a more frequent review. (See the previous discussion of the need for more frequent reviews under preamble discussion of §§ 483.106(b) and 483.114(c)). The statutory basis for proposing that the availability of FFP for PASARR-affected residents be subject to reevaluation and reconfirmation of NF and active treatment needs through annual resident reviews is found in section 1919(e)(7)(C)(iii) of the Act. Should an individual subsequently be found to need neither NF nor active treatment services, the individual would have to be discharged as provided for in § 483.118(b). However, an individual who no longer needs active treatment could be reclassified as needing mental health services or specialized psychiatric rehabilitation which are below the level of active treatment, and are NF services. Because he or she needs NF services, the individual would not need to be discharged.

We would also note that for short term residents who must be discharged, FFP would not be available after a reasonable time period for arranging the discharge and orienting the resident. By a reasonable period of time, we generally mean the 30 days notice that the facility must normally provide the resident in the case of a transfer or discharge unless the resident's health improves so as to allow for an earlier discharge or an earlier transfer is necessitated by the resident's urgent medical needs. Given the intensity of need for services that active treatment connotes, a more timely transfer may be necessary; however, many of these individuals needing transfer as a result of the annual resident review determinations have been inappropriately placed in the NF for some time and 30 more days would appear to make little difference. If an appeal is made, FFP would continue until the appeal is completed. If an appeal is completed, withdrawn or terminated before the 30 days have elapsed, the resident would still be entitled to the full 30 days and FFP should continue until discharge. (See preamble discussion of subpart E.) Also, as noted above, FFP may continue if the individual is covered under the provisions of an approved ADP and the State is in compliance with that plan.

In § 483.124, we would specify that FFP is not available for active treatment furnished to NF residents as a NF service, although the Act requires that it be furnished by States. We base this provision on section 1919(e)(7)(G)(iii) of the Act, which expressly excludes nursing facility services from the definition of active treatment and vice-

versa. Indeed, Congress made it quite plain when drafting the nursing home reform provisions that it expected the States to provide or arrange for active treatment to NF residents without the benefit of Federal Medicaid funds. Specifically, the House Committee Report provided:

The Committee recognizes and intends that the Committee amendment would impose an affirmative obligation on States to provide active treatment services with respect to certain individuals without providing commensurate Federal matching funds, except in the context of ICF/MR services (and psychiatric services for individuals under age 21) where such funds are readily available under current law * * *. In the Committee's view, the responsibility for providing, or paying for the provision of, active treatment lies with the States. (H.R. Rep. No. 391, 100th Cong., 1st Sess. 462 (1987).)

In specifying that active treatment services cannot be covered by FFP as NF services, we are not suggesting that active treatment services, per se, can be covered by FFP if the services are provided outside a NF. Active treatment services are neither a mandatory nor an optional service under the Medicaid program. However, individual components of an active treatment program may be covered services under the State plan. In the State Medicaid Manual, Transmittal No. 42, we suggested that States could receive FFP for some components of an active treatment program by using other optional services in their State plans (such as physical, occupational, or speech therapies, rehabilitation services, or clinic services) to build active treatment programs for individuals. What makes treatment "active" is the level of intensity and integration of discrete services into a comprehensive package which is directed toward meeting the individual's needs. The individual components on their own do not equal active treatment; but by employing various building blocks for which reimbursement is available, the State may receive some Federal help in meeting the active treatment needs of individuals. The State may also use targeted case management, if it is an optional service under its State plan, to coordinate the delivery of active treatment services, both to individuals in NFs and to individuals in other settings.

We wish to stress, however, that delivery of active treatment, as we have defined it, in a NF setting is extremely difficult. We would, therefore, require that the State provide assurances of how it will deliver active treatment

services to NF residents who need them. To reinforce this point, we would propose at § 483.126 a definition of appropriate placement. Specifically, we would provide that placement of an individual with MI or MR in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services that can be delivered in the NF to which the individual is admitted either through NF services alone or, when necessary, through NF services supplemented by active treatment services provided by or arranged for by the State.

We conceive of a NF level of care as a stratum in a vertical continuum of care. The NF layer has both top and bottom limits. The lower limit is established by section 1919(a)(1) of the Act. That is, a NF provides health and related services above the level of room and board. The upper limit consists of the practical limitations on the intensity of services a NF, given the staffing and funding it has available, can be reasonably expected to provide within the range of services specified by the statute in section 1919(b)(4). Such a conception of a NF level of care is provided for in the statute at least with respect to current residents. The statute requires that the State mental health and mental retardation authorities determine whether the resident requires a NF level of care or the level of care provided by a different specialized provider (i.e., a psychiatric hospital, an IMD, or an ICF/MR). We believe this same concept of a level of care also applies to new admissions being subjected to preadmission screening because Congress seems unlikely to have enacted these PASARR provisions in order to have a less stringent understanding of a NF level of care for new entrants into the system that it had for the current residents.

PASARR Criteria

Section 1919(f)(8)(A) of the Act, as added by section 4211 of OBRA '87, requires that we develop minimum criteria for the State to use in making determinations under the PASARR requirements.

In new §§ 483.128 and 483.130, we establish general criteria that States must use in establishing a PASARR program. Section 483.128 deals with requirements for the evaluation phase of the PASARR while § 483.130 deals chiefly with requirements for the determination phase although it also details the evaluative bases for making categorical, as opposed to

individualized, determinations. In our instruction, and again in this preamble, we note that we are outlining criteria, not process. We propose that each State may develop its own process within these guidelines.

The first criterion, presented in § 483.128(a), is that the State must have a system for identifying individuals who are suspected of having MI or MR as defined in § 483.102. The identification phase of PASARR we described as Level I in the State Medicaid Manual, Transmittal No. 42. Level II, as presented in the same instruction, is the evaluation and determination phase of PASARR which answers two questions: First, does this individual, already identified as having MI or MR, need NF services, and secondly, does he or she need active treatment. Only the Level II functions are described in the statute. The statute is silent on the issue of who should determine who has MI or MR, or how it should be done yet clearly this function must be performed because individuals who do not have MI or MR are not subject to PASARR. Because the Act prohibits a NF from admitting any individual with MI or MR who has not been screened by the State authorities and determined appropriate for placement, the facility obviously has a considerable interest in saying who has MI or MR and therefore must be screened. As a matter of logic, we indicated in early memoranda to the State Medicaid agencies that NFs should perform the level I identification screens.

In the first months of PASARR implementation by the States, it was alleged that, because a large proportion of NF admissions come directly from hospitals, a hospital back-up problem was occurring in certain areas or States. To alleviate any such occurrences, hospitals asked to be allowed to make Level I referrals to the State authorities as part of their discharge planning process rather than waiting for the prospective admitting NF to make the referral.

We suggested in the State Medicaid Manual, Transmittal No. 42, and restate in this proposed rule that the State has considerable flexibility in designing its Level I process. If the State chooses, it may use facilities or hospital discharge planners to perform the Level I screening and make referrals to the State mental health and mental retardation authorities. If the State allows hospitals to participate, they can begin the discharge planning process immediately upon admission by alerting the State mental health or mental retardation authority of the need for

screening for all individuals with MI or MR who would be likely to need convalescent care after the hospital stay. Alternatively, the State may delegate or contract the Level I activity to another entity, or it may retain it for itself. States appear to have selected a variety of organizational methods for performing the Level I identifications. We are not dictating process, only requiring that the State have a mechanism for identifying who has MI or MR and providing for timely screenings and determinations.

The State's Level I mechanism is responsible for identifying all individuals who have MI or MR, as defined in § 483.102. The statute does not provide any basis for limiting PASARR to only those individuals who have a "known diagnosis" of MI or MR. In the State Medicaid Manual, Transmittal 42, we suggested that facilities and States could protect themselves from the imposition of possible sanctions for failure to identify some individuals who have MI or MR by screening all individuals applying to or residing in the NF in some fashion to determine if they have MI or MR regardless of the "known diagnosis." For current residents, the facility's routine resident assessment process can serve simultaneously as the Level I for annual resident reviews. For new admissions, however, the Level I process may be somewhat more difficult because of a lack of comprehensive and consistent data.

For this reason, we further suggested in the instruction that the Level I evaluator should use discretion in reviewing client data and look behind diagnostic labels when determining whether an individual has a primary or secondary diagnosis of MI and does not have a primary diagnosis of dementia. When no diagnosis of MI is indicated, the Level I evaluator should look for any presenting evidence of MI. (See the instruction for a number of clues that might indicate that MI is the "real" primary or secondary diagnosis). We also cautioned against the possibility of a misdiagnosis resulting from a confusion of MI and dementia. Because a diagnosis of dementia would exclude an individual from further screening, we suggested that a diagnosis of dementia should be supported by positive evidence from a thorough mental status examination which focuses especially on cognitive functioning and which is performed in the context of a complete neurological or neuro-psychiatric examination. We also indicated that a neurological examination on its own may corroborate a diagnosis of

dementia, but such examinations are not determinative. Because we recognize that not everyone will agree with us that the diagnostic screening requirements for determining whether an individual has a primary diagnosis of dementia need be as stringent as these to achieve their purpose, we specifically solicit comments on this issue.

Since a Level I mechanism is required as a necessary component for the State's PASARR program to work, funding issues arise. In State Medicaid Manual transmittal No. 63, issued in July 1989, we clarified PASARR funding issues with respect to Level I and Level II as follows:

- The responsibility for identifying individuals (through Level I screening) who appear to have MI or MR lies with the NF since it is prohibited from admitting any new resident who has MI or MR unless the State mental health or mental retardation authority has determined that the individual requires a NF level of care. (Also, the State cannot make payment for services for any current resident for whom a PASARR determination is required but none has been made.) Depending upon the method of entry of new admissions into a NF, the expense of identifying those individuals who are subject to PAS can possibly be incurred by either the NF or a State employee or contractor. Since a large portion of new admissions to NFs come directly from hospitals, a State may choose to contract with hospitals to have their discharge planners do the Level I screening and referral to the State authorities for PAS. Referrals to the State of current residents for ARR is normally the responsibility of the NF (as an outcome of the routine resident assessments required under section 1919(b)(3) of the Act) unless the State chooses to do the Level I identifications for ARR itself in conjunction with performing Level II evaluations.

If the State performs the identification screening, it is a PASARR activity and will be reimbursed at the 75 percent FFP rate as an administrative cost. If the identification screen is done by the NF it may be made part of the NF rate, and thereby be reimbursed as a Medicaid service at the applicable Federal medical assistance percentage. If the State contracts with third parties such as hospital discharge planners for the identification of individuals who appear to have MI or MR, the reimbursement rate is 75 percent. However, the State may not contract with a NF for the Level I screenings and receive 75 percent FFP since the NF itself has the responsibility

to identify and deny admission to those individuals who may have MI or MR.

State expenditures incurred to evaluate and make the required determinations regarding the level of services and active treatment needs for individuals identified as possibly having MI or MR during either the PAS or ARR are reimbursed at the 75 percent rate. This rate also applies to the independent physical and mental evaluation by a person or entity other than the State mental health authority which is required for individuals with MI.

At this time we do not believe it is necessary to establish a time frame for Level I reviews because these decisions appear to be being made speedily. We specifically solicit comments, however, on the issue of whether a time frame is needed and, if so, of what duration.

Because Level I PASARR determinations are appealable (See the preamble discussion of subpart E), we would further specify that the State's Level I mechanism include issuance of written notice to the individual or resident of a decision to refer him or her to the State mental health or mental retardation authority for a Level II PASARR screening because he or she is suspected of having MI or MR.

As another criterion (§ 483.128(b)), we would require that evaluations performed under PASARR must be adapted to the cultural background, language, ethnic origin and means of communication used by the individual being evaluated.

We would require at § 483.128(c) that the State's PASARR program use at least the evaluative criteria of § 483.130 (if one or both determinations can easily be made categorically as described in § 483.130) or of §§ 483.132 and 483.134 or 483.136 (or, in the case of individuals with both MI and MR, §§ 483.132, 483.134 and 483.136 if a more extensive individualized evaluation is required). (See the preamble discussion of categorical determinations under § 483.130).

We would require at § 483.128(d) that in the case of individualized evaluations, information that is necessary for determining whether it is appropriate for the individual with MI or MR to be placed in a NF or in another appropriate setting should be gathered throughout all applicable portions of the PASARR evaluation (§§ 483.132 and 483.134 and/or 483.136). The two determinations relating to the need for NF level of care and active treatment are interrelated and must be based upon a comprehensive analysis of all client data. (See definition of appropriate placement under § 483.126).

In § 483.128(e) we would allow evaluators to use relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. In cases where categorical determinations can readily be made, existing data must, out of necessity, be used. In more complex cases where individualized determinations must be made, the State's PASARR program will likely need to gather additional information necessary to supplement and verify the currency and accuracy of existing data and to assess proper placement and treatment.

We would require in § 483.128(f) that for both categorical and individualized determinations, findings of the evaluation must correspond to the person's current functional status as documented in medical and social history records.

We would require in § 483.128(g) that for individualized PASARR determinations, findings must be issued in the form of a written evaluative report which meets the following requirements. It must identify the name and professional title of the person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered. It must provide a summary of the evaluated individual's medical and social history, including his or her positive traits or developmental strengths and weaknesses or developmental needs. If NF services are recommended, the report must identify the specific services which are required to meet the evaluated individual's needs. If active treatment is not recommended, the report must identify among the NF services that are needed any specific mental retardation or mental health services that are of a lesser intensity than active treatment and are required to meet the evaluated individual's needs. If active treatment services are recommended, the report must identify the specific mental retardation or mental health services required to meet the evaluated individual's needs. Finally, the report must include the bases for the report's conclusions.

We would require in § 483.128(h) that, for categorical PASARR determinations, findings be issued in the form of an abbreviated written evaluative report which meets the following requirements. It must identify the name and professional title of the person applying the categorical determination and the date on which the application was

made. It must explain the categorical determination(s) that has (have) been made and describe the nature of any further screening which is required (if only one of the two required determinations can be made categorically). The report must identify, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed (see the preamble discussion of categorical determinations under § 483.130). We note that under § 483.130(g) a determination that active treatment is needed cannot be made categorically without being followed by a more extensive individualized evaluation to determine the exact nature of the services needed and that, under § 483.130(h) all individuals with MR must receive the more extensive individualized evaluation to determine whether active treatment is needed. Finally, the report must include the bases for the report's conclusions.

For both categorical and individualized determinations, we would require in § 483.128(i) that findings of the evaluation be interpreted and explained to the individual and, to his or her legal representative, when applicable. The individual and his or her representative must also receive a copy of the written evaluation report.

We would require in § 483.128(j), in the case of applicants for NF services, that the evaluation report be submitted within 5 working days by the evaluator to the appropriate State authority so that the appropriate State authority may make the necessary determinations with the 7 working days of referral, as required in § 483.112(c). Since we have specifically solicited comments on the 7 day time frame for completing Level II preadmission screenings, we, of course, would similarly welcome comments on this 5 day requirement.

Lastly, in § 483.128(k) we would permit the evaluation to be terminated if the evaluator finds at any time during the evaluation that the individual being evaluated does not have MI or MR or has a primary diagnosis of dementia (including Alzheimer's Disease or a related disorder) and does not have a diagnosis of MR or a related condition.

In § 483.130 we would specify general requirements for PASARR programs with respect to determinations. Specifically, we would require that all determinations made under the State's PASARR program meet the determinative criteria described below.

First, in § 483.130(a) we require that determinations made by the State mental health or mental retardation authority as to whether NF level of

services and active treatment are needed must be based on an evaluation of data on the individual, either as specified in (b) of this paragraph or in §§ 483.132 (PASARR/NF), 483.134 (PASARR/MI) 483.136 (PASARR/MR) (or, in the case of an individual having both MR and MI, §§ 483.132, 483.134 and 483.136).

In § 483.130(b) we would permit the determinations in paragraph (a) of this section to take the form of advance group determinations by category that take into account that certain diagnoses or levels of severity of illness clearly indicate that admission to or residence in a NF or the provision of active treatment is or is not normally needed or the determinations may take the form of individualized determinations based on more extensive individualized evaluations as required in § 483.132, 483.134, or 483.136. In the case of an individual having both MR and MI, 483.132, 483.134 and 483.136 would both be required.

In § 483.130(c), we would permit advance group categorical determinations developed by the State mental health or mental retardation authorities to be applied by the NF or other evaluator following Level I review only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator to determine readily that the individual fits into the category established by the State authorities. At a minimum, existing data should include all the data requirements listed in § 483.132(c). Sources of existing data on the individual which could form the basis for applying a categorical determination by the State authorities would be hospital records, physician's evaluations, election of hospice status, records or community mental health centers or community mental retardation or developmental disability providers.

In § 483.130(d), we present examples of categories for which the State mental health or mental retardation authority may make an advance group determination that NF services are needed. These include, but are not limited to, convalescent care from an acute physical illness for which hospitalization was required; terminal illness as defined for hospice purposes in § 418.3; and severe physical illness such as coma, ventilator dependence, functioning at a brain stem level, or diagnoses such as obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in a level of physical impairment so severe that the individual

could not be expected to benefit from active treatment.

We would also permit a category which provides for provisional admissions pending further assessment in cases of delirium when an accurate diagnosis cannot be made until the delirium clears. Another category would provide for very brief and finite stays of up to a fixed number of days to provide respite to in-home caregivers to whom the individual with MI or MR is expected to return following the brief NF stay or in order to permit alternative arrangements for longer term care in emergency situations requiring protective services.

In § 483.130(d) (1)-(5), we are proposing five types of categorical determinations for which NF care is normally needed. However, we do not wish to imply that this list is all-inclusive. States may wish to establish other reasonable categories for expedited determinations so long as the intent of the process is not to create a means of avoiding the PASARR requirements.

For this same reason, we would further specify that the State may establish time limits for categorical determinations that NF services are needed and, in the case of paragraph (d) (4) and (5), must specify a time limit which is appropriate for provisional admissions pending further assessment and for respite care. If an individual, originally admitted under paragraphs (d) (4) or (5), is later found to need a longer stay than the State's limit allows, the individual would have to be subjected to a more thorough individualized PASARR evaluation before continuation of the stay could be permitted and payment could be made for days of NF care beyond the State's time limit. We believe this requirement is necessary in order to prevent provisional and respite admissions from being used as a loophole for avoiding performance of more thorough PASARR screenings. Once the individual has been admitted to the NF, a "preadmission" screening obviously cannot be performed, but resident reviews are required "at least annually." Under this requirement, an immediate resident review would have to be performed if a resident's stay exceeded the State limit for the categorical admission. We would anticipate, however, updating of the resident's preadmission screening results (as in the case of inter-facility transfers at § 483.106(b)) if portions of the original preadmission screening determination were based on the more thorough individualized evaluation.

We would specify in § 483.130(e), that the State mental health authority must require the more extensive individualized evaluations for at least each resident or applicant with a diagnosis in any of the following categories to see whether active treatment services for MI are needed: schizophrenia, paranoia, major affective disorders, schizoaffective disorders, and atypical psychosis.

In § 483.130(f), we would permit the State mental health authority to devise lists of minor mental disorders (with the exception of MR) which alone normally do not warrant active treatment and should not serve as barriers to admission to or continued residence in a NF. In general, we would anticipate that nearly all categorical determinations with respect to the need for active treatment should only be in the negative—that the individual does not need active treatment because of the presence of data indicating that the individual has only some minor mental disorder.

We would propose in § 483.130(g) that the State mental health and mental retardation authorities must not make categorical determinations that active treatment is needed without requiring that such a determination be followed by a more extensive individualized evaluation under § 483.134 or 483.136 to determine the exact nature of the active treatment services which are needed.

In § 483.130(h) we would propose that the State mental retardation authority must not make categorical determinations that active treatment is not needed for individuals with MR. A determination that an individual with MR does not need active treatment must be based on a more extensive individualized evaluation under § 483.136.

We would also propose, however, in § 483.130(i) that the State mental health or mental retardation authority may make categorical determinations that certain mental conditions or levels of severity of MI would normally require active treatment services of such an intensity that an acceptable active treatment program could not be delivered by the State in most, if not all, NFs and that another, more appropriate placement must be utilized in all optional placement situations. We would provide for an exception to this type of categorical determination for the long-term resident group identified in § 483.118(c)(1) to whom the Act grants a right to stay in the NF, if they so choose. In all other cases, under § 483.130(g), the State must not admit the individual to a NF even if the individual meets other criteria for a categorical determination

with respect to physical needs. The eventual placement decision would have to be made after a more extensive individualized evaluation of the active treatment needs. This might mean, for instance, that even though the severely psychotic individual is ventilator dependent, suffers from congestive heart failure, or is terminally ill, he or she should receive the physical care he or she needs in a psychiatric hospital rather than in a NF.

In § 483.130(j), we would permit the State mental health or mental retardation authority to make a categorical determination that certain individuals of advanced years may, for payment and placement purposes, be allowed to decline active treatment in a NF under certain limited circumstances. First, the individuals must have already been determined either categorically or individually to need NF care and, based on an individualized evaluation, to need active treatment. We do not believe that a positive determination that an individual needs active treatment can be made categorically. A more extensive evaluation to determine the exact nature of the services needed must be performed before active treatment services can be declined. In addition, for payment and placement purposes, we would specify that in order to permit an individual to decline active treatment on the basis of advanced years, the individual must not be a danger to him or herself or others; the categorical determination to let the individual forego active treatment must be left open as to a specific age; and the decision must be made on an individual basis by the client or his or her legal representative. As they age, individuals with MR or MI vary considerably in their ability to benefit from active treatment. Any advanced years category which the State might adopt must take this fact into account.

In permitting such an advanced years category, we in no way intend to limit a resident's right to refuse treatment. As provided for in the February 2, 1989 rule in § 483.10(b)(4), a resident always has a general right to decline any medical treatment he or she chooses to decline. Our discussion here of an advanced years category is aimed at preventing a blanket application by a State of an advanced years categorical determination to all individuals with MI or MR in a NF who are of a certain age specified by the State. We are concerned that States could easily abuse such a category in an effort to relieve themselves of the responsibility of providing active treatment to individuals in the group who need it. Many of these individuals, we believe, would not,

except for the urging of the State, decline these services. We do believe, however, that an advanced years category may be useful in making placement and payment decisions. (For the origins of this categorical determination, see a pre-existing section of the State Medicaid Manual, section 4395, on inappropriate placement of mentally retarded persons in SNFs and ICFs, which was most recently revised in August 1986).

In § 483.130(k) we would require that the State make determinations for all mental disorders described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, Revised, except for dementias, and require determinations, either categorically or individually.

In § 483.130(l), we would specify that if a determination concerning NF needs takes the form of a categorical determination, the State may not waive the active treatment determination. The individual must also receive either a categorical determination that active treatment is not needed, or be subjected to a more extensive individualized evaluation as specified in §§ 483.134 or 483.136.

In § 483.130(m), we would require that all determinations of whether an individual requires the services provided by a NF, regardless of how they are arrived at, must be recorded in the individual's record. If the individual resides in or is admitted to the NF, the NF's records on the resident must state that the individual was subjected to PASARR and must provide substantive information concerning the date and nature of the determinations. This information is needed in the NF resident's record for compliance as well as administrative purposes. That is, the NF must be able to demonstrate the PASARR status of all residents with MI or MR. The NF's resident records must also permit identification of residents who either are or are not subject to annual residents reviews. For example, if an individual was subjected to PASARR, or a partial PASARR, and was determined not to have MR or MI, this information should be noted in the resident's record so that he or she will not be subjected to subsequent annual reviews (unless evidence subsequently emerges to question the determination that the individual does not have MR or MI). An indication of a previous PASARR in the resident's records will also serve as a reminder that PASARR data must be taken into account in performing the NF's routine assessments on the resident.

In § 483.130(n) we would require that the evaluated individual and his or her legal representative, when applicable, be advised in writing of the determinations that have been made and, with the notice of determinations, be advised of his or her appeal rights under Subpart E of this part.

In § 483.130(o), we would specify that the notice of determinations made by the State mental health or mental retardation authority must indicate clearly whether a NF level of services and active treatment are needed. Also, the notice of determination must indicate the placement options that are available to the individual consistent with these determinations.

In § 483.130(p) we would identify the placement options and the required State actions that are consistent with the Act and these regulations. For applicants to a NF, there are two placement options, described in § 483.130(p) (1) and (2). Applicants either can or cannot be admitted to the NF. Those who can be admitted to the NF are applicants with MI or MR who require the level of services provided by the NF, regardless of whether active treatment is also needed, if the placement is appropriate (see § 483.126). If active treatment is also needed, the State is responsible for providing or arranging for the provision of the active treatment services. The NF, however, is not required to admit the individual even if the State mental health or mental health authority determines that the individual can be admitted. Those who cannot be admitted to the NF are applicants with MI or MR who do not require the level of services provided by a NF, regardless of whether active treatment is also needed. Because they do not require a NF level of services, they are inappropriate for NF placement and cannot be admitted.

For current residents, the placement options are more complex. In § 483.130(p)(3), we would specify who can be considered appropriate for continued placement in a NF. Any resident with MI or MR who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for active treatment, can continue to reside in the NF, if the placement is appropriate (See § 483.126).

In § 483.130(p)(4), we would specify who may choose to remain in the NF even though the placement would otherwise be inappropriate. Any resident with MI or MR who does not require the level of services provided by the NF but does require active treatment and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may

choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the State must meet his or her active treatment needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

In § 483.130(p)(5) we would specify who cannot be considered appropriate for continued placement in a NF and must be discharged (short-term residents). Any resident with MI or MR who does not require the level of services provided by a NF but does require active treatment and who has resided in a NF for less than 30 consecutive months must be discharged in accordance with § 483.12(a) to an appropriate setting in which the State must provide active treatment services. The determination notice must provide information of how, when, and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions. Provisions of an approved ADP under which the individual is covered may also be explained.

In § 483.130(p)(6), we specify who cannot be considered appropriate for continued placement in a NF and must be discharged (short- or long-term residents). Any resident with MI or MR who requires neither the level of services provided by a NF nor active treatment must be discharged in accordance with § 483.12(a), regardless of the length of his or her stay. The determination notice must provide information about how, when, and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

We would require in § 483.130(q), that if a determination is made to admit or allow to remain in a NF an individual who requires active treatment, the determination must be supported by assurances that the active treatment services which are needed can, or in the case of a long term resident who chooses to remain in the NF, will be provided or arranged for by the State while the individual resides in the NF.

In § 483.130(r) we would require the State PASARR system to maintain records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals

subjected to PASARR. We believe that documentation to support findings is important to justifying determinations made by the State mental health and mental retardation authorities, should individuals feel they are adversely affected by any aspect of the PASARR process (See the later discussion of appeals in this preamble). Since individuals may appeal a decision that they have or do not have MI or MR, that they do or do not need NF services, or that they do or do not need active treatment, accurate records of all parts of Level I and Level II decisions must be maintained.

In addition to providing support for its determinations and protecting individuals' appeal rights, maintenance of records indicating dates of determinations and notification is needed to establish schedules for subsequent annual resident reviews. To this same end, we would impose as a final requirement in § 483.130(s) that the State PASARR system must establish and maintain a tracking system for all individuals with MI or MR in NFs to ensure that future reviews are performed in accordance with the requirements of this subpart. Tracking is also needed for operating the appeals system.

We base these criteria on the advice of our consultants and other individuals who have provided us with advice and comment in the course of developing the current operating instructions and this proposed regulation. As indicated earlier, this consultative process has been in progress since early 1988.

In § 483.132 we would provide specific criteria for evaluating the need for NF services and NF level of care. In the State Medicaid Manual we referred to this portion of the PASARR evaluation process as PASARR/NF. These criteria must be used in performing individualized evaluations. The minimum data requirements of subsection (c) should also serve as a guide in judging the adequacy and completeness of existing data before applying categorical determinations with respect to the need for NF care which the State has developed. Categorical determinations cannot be made without sufficient evaluative data. (See § 483.130(c)).

In § 483.132(a) we would require that for each individual or resident with MI or MR the evaluator must assess whether the individual's total needs are such that they can only be met on an institutional basis and whether the NF is the appropriate institutional setting for meeting those needs (See § 483.126). We are aware that considerable difference

of opinion can exist over whether institutionalization is necessary or whether community care is a viable option. We note that the entire determination of whether NF care is needed is subject to appeal. Therefore, judgments concerning institutional versus community placement, which are a part of the larger determination, are also appealable.

We would further specify in § 483.132(b) that prioritization of needs is essential to determining appropriate placement. Therefore, the evaluator must prioritize the physical and mental needs of the individual being evaluated and the severity of each condition.

In § 483.132(c) we would require that, at a minimum, the data used in evaluating an individual's need for NF care include the following: an evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis); an evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to him or herself or others); and a functional assessment (activities of daily living). Criteria for determining whether individuals with mental illness require active treatment (PASARR/MI).

In § 483.134, we identify the minimum data needs and process requirements for a State to determine whether or not the individual with mental illness needs an active treatment program for mental illness.

In § 483.134(b), we would require that the data collected include—

- A comprehensive history and physical examination of the individual. If the history and physical examination are not performed by a physician, then a physician must review and concur with the conclusions. The following areas must be included (if not previously addressed):

- Complete medical history;
- Review of all body systems;
- Specific evaluation of the individual's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and
- In case of abnormal findings which are the basis for a NF placement, additional evaluations conducted by appropriate specialists.

- A comprehensive drug history including, but not limited to, current or immediate past use of medications that could mask symptoms or mimic mental illness.

- A psychosocial evaluation of the individual, including current living arrangements, medical, and support

systems. If the psychosocial evaluation is not conducted by a licensed social worker, then a licensed social worker must review and concur with the conclusions.

- A comprehensive psychiatric evaluation including a complete psychiatric history, evaluation of intellectual functioning, memory functioning, and orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations. If the psychiatric evaluation is not performed by a physician, then a board-eligible or board-certified psychiatrist must review and concur with the conclusions.

- A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities while living in the community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that NF placement is required.

- The functional assessment must address the following areas: Self-monitoring of health status; self-administering and scheduling of medical treatment, including medication compliance; self-monitoring of nutritional status; handling money; dressing appropriately; and grooming.

Based on the data compiled, we would require a board-eligible or board-certified psychiatrist to validate the diagnosis of mental illness and determine whether and to what extent a program of psychiatric active treatment is needed.

Criteria for Determining Whether an Individual With Mental Retardation Requires Active Treatment (PASARR/MR)

In § 483.136(a), we specify the purpose of § 483.136, which is to identify the minimum data needs and process requirements for a State to determine whether or not the individual with mental retardation or a related condition needs a continuous active treatment program, as defined in § 435.1009, "Active treatment in Intermediate Care Facilities for the Mentally Retarded" and § 483.440.

In § 483.136(b), we would require that minimum data collected must include the individual's comprehensive history and physical examination results to identify the following information or, in the absence of data, specific information that permits a reviewer to assess:

- The individual's medical problems;
- The level of impact these problems have on the individual's independent functioning;

- All current medications used by the individual and the current response of the individual to any prescribed medications in the following drug groups:

- Hypnotics,
- Antipsychotics (neuroleptics),
- Mood stabilizers and antidepressants,
- Anxiety-sedative agents, and
- Anti-Parkinsonian agents.

- Self-monitoring of health status;
- Self-administering and scheduling of medical treatments;

- Self-monitoring of nutritional status;
- Self-help development such as toileting, dressing, grooming, and eating;

- Sensorimotor development, such as ambulation, positioning, transfer skills, gross motor dexterity, visual motor perception, fine motor dexterity, eye-hand coordination, and extent to which prosthetic, orthotic, corrective or mechanical supportive devices can improve the individual's functional capacity;

- Speech and language (communication) development such as expressive language (verbal and nonverbal), receptive language (verbal or nonverbal), extent to which non-oral communication systems can improve the individual's function capacity, auditory functioning, and extent to which amplification devices (e.g. hearing aid) or a program of amplification can improve the individual's functional capacity;

- Social development, such as interpersonal skills, recreation-leisure skills, and relationships with others;

- Academic/educational development, including functional learning skills;

- Independent living development such as meal preparation, budgeting and personal finances, survival skills, mobility skills (orientation to the neighborhood, town, city), laundry, housekeeping, shopping, bedmaking, care of clothing, and orientation skills (for individuals with visual impairments);

- Vocational development, including present vocational skills;

- Affective development such as interest and skills involved with expressing emotions, making judgments, and making independent decisions; and

- The presence of identifiable maladaptive or inappropriate behaviors of the individual based on systematic observation including, but not limited to, the frequency and intensity of identified maladaptive or inappropriate behaviors.

We would require that States ensure that a psychologist who meets the qualifications of a Qualified Mental Retardation Professional, as defined in 42 CFR 483.430(a), identify the individual's intellectual functioning measurement and validate that the individual has mental retardation or is a person with a related condition. The State mental retardation authority must review the data collected from this section and determine whether the person's status compares with each of the following characteristics commonly associated with a need for active treatment:

- Inability to—
- Take care of most personal care needs;
- Understand simple commands;
- Communicate basic needs and wants;
- Be employed at a productive wage level without systematic long term supervision or support;
- Learn new skills without aggressive and consistent training;
- Apply skills learned in a training situation to other environments or settings without aggressive and consistent training;
- Demonstrate behavior appropriate to the time, situation or place without direct supervision; and
- Make decisions requiring informed consent without extreme difficulty;
- Demonstration of severe maladaptive behavior(s) that place the individual's or others health or safety in jeopardy; and
- Presence of other skill deficits or specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the person functional skills.

Credentialing Issues

We recognize that some readers will disagree with the judgments we have made concerning the qualifications that persons taking part in PASARR evaluations and determinations should have in order to perform these functions. We are also aware that Congress has recently been expanding the role of certain mental health providers under the Medicare program where States have authorized them to practice autonomously. In this proposed rule we have retained the credentialing requirements essentially as they were stated in the May 1989 State Medicaid Manual issuance which we developed through extensive consultation with a wide variety of groups. The sole change we have made thus far is to permit board-eligible as well as board-certified psychiatrists to pass judgment on whether active treatment is needed.

We considered making further and more substantial revisions to these requirements in this proposed rule, but decided that to do so now would be to listen only to select views rather than to the full range of public opinion which could be expected to respond during the public comment period. We believe that if active treatment is analogous to the care one would receive in a psychiatric hospital where the care is required to be supervised by a physician or a psychiatrist, a physician or psychiatrist ought to at least concur in positive determinations that active treatment is needed.

By deciding to not revise the credentialing recommendations of the program instruction in this proposed rule, we do not wish to imply that we are wedded to the particular position espoused here. We believe that full consideration needs to be given to all sides through the process of public comment. We therefore specifically solicit comments on these manpower and credentialing issues. In particular, we wish to receive comments on whether other professionals, for example, psychologists or clinical social workers, may have the skills needed to make these determinations.

Instructional Materials

Since the publication of our May 1989 State Medicaid Manual issuance containing implementation instructions, some additional information has come to light. First, we have learned that in discussing the statutory definition of MI our comments on Axis I and II diagnoses in DSM-III-R was somewhat inaccurate. In making categorical determinations as to the need for active treatment, States should not automatically assume that all Axis II diagnosis are minor. Regardless of under which axis a diagnosis appears, the current severity of impairment caused by the disorder is more important to making a valid determination concerning appropriate placement and the need for active treatment than the diagnosis itself. Categorical determinations by States should, therefore, be behaviorally-based rather than diagnosis-based.

Second, we have received additional questions concerning the clinical basis for discrimination between a diagnosis of dementia and that of another category of mental illness. We are taking the position that in order to serve as a means of excluding an individual from further screening, a diagnosis of dementia should be supported by positive evidence from a thorough mental status examination which focuses especially on cognitive functioning and which is performed in

the context of a complete neuro-psychiatric examination. A full neurological examination is generally not required. We have also received anecdotal information that at least one State may be routinely requiring CAT scans or MRI examinations to verify a diagnosis of dementia. Employing these measures routinely would appear to be inappropriate as well as wasteful when the diagnosis has been reasonably established on the basis of a prior examination and a patient's medical history. Our principal concern is that if an individual is exempted from further screening under PASARR based on this exclusion, the reason for the non-referral should be well documented.

Third, some individuals have raised the question of whether dementia as a secondary diagnosis still fits the definition of a mental illness since it is a mental disorder described in DMS-III-R and it is not primary. We have been advised that in most cases dementia would be classified as the primary diagnosis if a person also had another mental illness. However, in the case of someone with dementia seeking admission to a nursing facility for a physical problem, the order might be reversed. If the dementia were the secondary diagnosis, further screening would be required.

Fourth, we have become aware that the terms primary and secondary need definition. We are taking the view that a primary diagnosis is the principal diagnosis or that condition which is chiefly responsible for the proposed admission or continued residence in a NF. The secondary diagnosis would be the second most important reason for admission or continued residence. Since we have been advised that these PASARR requirements apply to individuals with mental illness or mental retardation without regard to "known diagnosis," the mere order in which diagnoses are listed on a chart cannot alone establish which diagnosis is primary and which is secondary or tertiary, etc. The mere listing of diagnoses would encourage avoidance of PASARR screening. The purpose of the Level I identification screen is to determine what the individual's real needs are since the NF will have to deal with them if the individual is admitted or allowed to stay in the NF.

In order to offer the public further opportunity to comment on this new information, we are publishing these comments on the instructional materials with this proposed rule. Readers who wish to comment may wish to consult the program manual instruction for more detailed discussions of the issues

involved. Copies of the State Medicaid Manual Transmittal No. 42 HCFA Pub. 45-4 can be obtained by calling the contact person listed at the beginning of this preamble.

Section 1919(c)(2)(B) of the Act requires that before a NF discharges or transfers a resident, the NF must notify the resident or the legal representative at least 30 days in advance of the resident's discharge or transfer. The law provides that under certain circumstances, the notice period may be less than 30 days. We would provide in § 483.138 that if a NF mails a 30 day notice of its intent to discharge or transfer a resident, under existing provisions in § 483.12(a), the agency may not terminate or reduce services until the 30 day notice period has expired. FFP would be available for NF services provided to Medicaid recipients during the notice period. We believe it would be inequitable to require that the agency maintain services to a resident who has received a 30 day notice and not have the period covered by FFP. FFP may also continue beyond the 30 day notice period if the decision to transfer or discharge is under appeal and the appeals process has not yet reached a conclusion.

Appeals of Discharges, Transfers, and PASARR Determinations

Section 1819(c)(2) and 1919(c)(2) of the Act set forth the transfer and discharge rights of residents of skilled nursing facilities participating in Medicare and nursing facilities participating in Medicaid. The requirements for ensuring the transfer and discharge rights of residents in nursing facilities (section 1919(c)(2)) are likewise applicable to residents required to be transferred or discharged as a result of the annual resident review process in accordance with section 1919(e)(7)(C)(ii)(I) and section 1919(e)(7)(C)(iii)(I) of the Act. These requirements are addressed at 42 CFR 483.12 as part of the rules governing long term care facilities published at 54 FR 5316, 5362 (Feb. 2, 1989). (The effective date of those regulations was delayed to October 1, 1990 by a notice published in the Federal Register December 29, 1989 at 54 FR 53611.) While 42 CFR 483.12 sets forth the requirements for notification of the right to appeal, the appeals process to be used is proposed in this regulation. These proposed regulations also implement the appeals rights of individuals adversely affected by the PASARR determinations as required by section 1919(e)(7)(F) of the Act.

In particular, these regulations would implement the requirements of sections 1819(c)(2)(B)(iii)(I), 1819(e)(3), and

1819(f)(3) of the Act with respect to appeals of discharges and transfers made by skilled nursing facilities participating in Medicare, sections 1919(c)(2)(B)(iii), 1919(e)(3), and 1919(f)(3) of the Act with respect to appeals of involuntary transfers and discharges made by nursing facilities which participate in Medicaid, and section 1919(e)(7)(F) of the Act with respect to appeals of adverse determinations made by the State in its preadmission screening and annual resident review of NF residents with mental illness or mental retardation. These sections of the Act require that the State establish and maintain an appeals process that is available to individuals proposed to be transferred or discharged from skilled nursing facilities and nursing facilities or adversely affected by a PASARR determination.

In developing these proposed rules we examined sections 1819(e)(3), 1819(f)(3), 1919(e)(3) and 1919(f)(3) of the Act, which require that the State must provide for a fair mechanism for hearing appeals on transfers and discharges and section 1919(e)(7)(F) of the Act, which provides that the State must have in effect an appeals process for individuals adversely affected by PASARR determinations. We also examined the legislative history of section 1919(e)(7)(F) which states that:

[t]he [C]ommittee on the Budget expects that these appeals procedures will offer mentally ill and mentally retarded individuals at least the due process protection of a Medicaid fair hearing under current law, including notice of the right to appeal, right to representation by counsel, and right to a fair and impartial decision-making process. (H.R. Rep. No. 391, 100th Cong., 1st Sess. 463 (1987)).

Therefore, to the extent possible, we propose an appeals process that uses the Medicaid fair hearing process specified in 42 CFR part 431, subpart E. While we believe the majority of the fair hearing processes can be applied to appeals regarding SNF and NF transfers, discharges, and adverse PASARR determinations, there are certain elements of the fair hearing regulations that cannot be made applicable because of unique statutory requirements governing these appeals.

The fair hearing regulations require, with some exceptions, that a notice must be mailed 10 days, or in some cases 5 days, before the date the adverse action will be taken. Sections 1819(e)(2)(B)(i) and 1919(c)(2)(B)(ii) of the Act require that, subject to certain exceptions, 30 days notice must be given for transfers and discharges. If, as a result of one of these exceptions, the facility provides

less than 10 days notice, we would provide in § 431.213(h) that the State may mail a notice of the action not later than the date of the action since 10 days notice would be impossible in such situations. Likewise, an exception from the 10 day notice requirement has also been made for notices involving preadmission screening determinations.

The fair hearing regulations specify the contents of the notice to be given by the State to an individual. Sections 1819(c)(2) and 1919(c)(2) state the requirements for transfer and discharge notices to be given by the facilities. These requirements are set forth in regulations at 42 CFR 483.12 and will be required in addition to those required of the State by the fair hearing regulations.

The fair hearing regulations provide for the maintenance and the reinstatement of services, and for FFP for expenditures for such services, until after the hearing is conducted, if certain conditions are met. This same process would apply to hearings for the transfer and discharge of Medicaid recipients under the proposed regulation. The fair hearing provisions and these proposed regulations provide only for continued funding for Medicaid recipients, not for Medicare recipients. Funding of Medicare services is available only to the extent it is otherwise available under Title XVIII of the Act.

In this regulation, we propose to make changes in the fair hearings regulations at 42 CFR part 431, subpart E in order to add the appeals required by these regulations as well as to make conforming changes to accommodate the differences in the appeals process that are discussed above.

In § 483.200, we restate the statutory basis for the provisions in subpart E, which are sections 1819(e)(3), 1819(f)(3), 1919(e)(3), and 1919(f)(3) of the Act.

In § 483.202 we propose to include definitions of resident, individual, transfer and discharge for purposes of this subpart and subparts B and C. We propose to define a "resident" as being a resident of a SNF or NF or any legal representative of the resident. Similarly, we propose to define "individual" with respect to PASARR determinations, as being an individual or any legal representative of the individual. We propose these definitions so that the resident or individual may be represented by anyone of his or her choosing (including legal counsel, a long term care ombudsman, family or friend) so long as the representative is appointed through some legal process designated under State law.

We propose to define "transfer" as meaning movement of a resident from

an entity that participates in Medicare as a skilled nursing facility, a Medicare certified distinct part, an entity that participates in Medicaid as a nursing facility, or a Medicaid certified distinct part to another institutional setting and the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility. Similarly, we propose to define "discharge" as meaning movement from an entity that participates in Medicare as a skilled nursing facility, a Medicare certified distinct part, an entity that participates in Medicaid as a nursing facility or a Medicaid certified distinct part to a noninstitutional setting and the discharging facility ceases to be legally responsible for the care of the resident.

States and consumer advocates have asked whether we define "transfer" and "discharge" for purposes of this requirement as including relocation within the facility. As specified in § 483.206, appeals of discharges and transfers would apply only to discharges from the facility and to transfers to another facility; they do not apply to the relocation of a resident within a facility. We believe that both the Act and the relevant legislative history support our interpretation. Specifically, sections 1819(c)(2)(A) and 1919(c)(2)(A) both refer to "transfer and discharge" from the facility. Moreover, the report of the Budget Committee report also refers to transfer and discharge from the facility (H.R. Rep. No. 391, 100th Cong., 1st Sess. 932 (1987)).

However, note that, for this purpose, we consider a "facility" to be the certified entity so that:

- When a resident is moved from a certified bed into a noncertified bed, he or she is transferred to another facility and would have appeal rights;
- When he or she is moved from one bed in the certified entity to another bed in the same certified entity, he or she is relocated, not transferred and would have no appeal rights;
- When he or she is moved from a bed in a certified entity to a bed in an entity which is certified as a different provider, he or she is transferred and would have appeal rights.

Although these regulations do not propose to require States to establish appeals processes for relocations of residents in facilities, we are aware that some States and localities already have appeals procedures for relocation within a facility. Since facilities must comply with relevant State and local laws and regulations, such requirements would continue in effect and States would not need to conform them to these regulations. Similarly, some States and localities have more stringent

requirements for the timeliness of appeals of transfers, discharges and relocations than we propose. Where the current requirements are more stringent than the proposed Federal requirements, no changes would be necessary to conform them to these requirements once final.

Because we have received questions from some States concerning the scope of PASARR appeals, we wish to clarify that both of the formal PASARR determinations made by the State mental health and mental retardation authorities are appealable (i.e., that NF care is (or is not) needed and that active treatment is (or is not) needed). We base our view that PASARR appeals are not to be limited solely to denials of admissions to a NF on the legislative history which states:

To protect individuals against erroneous State determinations the Committee amendment would require States, by January 1, 1989, to have in place a fair process to allow individuals adversely affected by a State determination in the context of either a preadmission screening or an annual review to appeal that determination. Individuals could be adversely affected not only by a determination that he or she does not need nursing facility services, but also by determinations that he or she does not need active treatment. (H.R. Rep. No. 391, 100th Cong., 1st Sess. 462-463 (1987)).

Both categorical and individualized determinations made by the State mental health and mental retardation authorities with respect to the need for NF care and active treatment, as described in section 483.130, are appealable. The determination that NF level of care is or is not needed contains within it a judgment concerning institutional versus community placement. As such, this judgment is also appealable.

In addition, we believe that the State's PASARR system could err at other points than solely through the two formal PASARR determinations. Such erroneous actions could adversely affect individuals and are, therefore, appealable. For instance, an individual could object to being classified as having or not having mental illness or mental retardation. Such a determination is made during the Level I phase of PASARR and in the final verification at the end of PASARR. We believe that an individual cannot appeal the requirement that he or she is subject to PASARR because he or she has mental illness or mental retardation, but the Level I determination, performed by the NF or other Level I agent of the State, that the individual has mental illness or mental retardation (and is therefore subject to PASARR) is

appealable. (See § 483.128(a) which requires that the State have a system for making Level I determinations).

Determinations of who has mental illness or mental retardation are likely to be subject to question for a number of reasons. First, the statutory definition of mental illness is very broad, including minor mental disorders. Secondly, because the definition of mental illness rests on a ranking of the individual's medical problems, an individual could dispute the determination that a mental disorder is the primary or secondary diagnosis. In addition, there is the possibility of misdiagnosis between dementia, which would exclude an individual from PASARR, and mental illness, which would necessitate screening. Also, individuals with certain forms of mental retardation, such as Down's Syndrome, often develop dementia as they reach the middle years. Since NFs may have a vested interest in referring all suspected cases of mental illness or mental retardation for screening, individuals need a mechanism to appeal a positive Level I determination.

Such individuals could claim they are adversely affected when a PASARR referral may result in delayed admission or a denial of NF care. In the case of NF applicants, having to await completion of preadmission screening may result in at least a temporary denial of appropriate care, added hospital bills, or other hardships. However, under the 7 day timeframe we have proposed for preadmission screenings (see § 483.112(c)), a screening would take less time than an appeal. Therefore, in including Level I determinations within the scope of appeals, we do not believe we would be inviting a large number of frivolous appeals.

Similarly, we believe a negative finding of mental illness or mental retardation is appealable. For example, a determination could be made during the course of a PASARR evaluation that the individual does not have mental illness or mental retardation. Also, an individual could contest a determination that he or she is not subject to PASARR because he or she does not have mental illness or mental retardation. Because section 1919(e)(7)(C) of the Act provides benefits to certain individuals, principally the right of long-term residents to choose to remain in the NF if it is found that he or she does not need NF services but does need active treatment, an individual must have a right to request a PASARR if one has been denied or to question the cessation of PASARR on the grounds that the

individual does not have mental illness or mental retardation.

We considered how negative Level I determinations could result in a request for a hearing without having to require issuance of a notice to all individuals who are excluded from PASARR by virtue of not having MI or MR. Requiring individual negative notices would create an overwhelming paperwork burden. That is, every applicant to a Medicaid-certified nursing facility who is found not to have MI or MR would have to be issued a notice to this effect. In addition, all continuing residents without MI or MR would have to be issued a notice on an annual basis. Since we envision that the nursing facility's annual resident assessment process may serve as the Level I mechanism for identifying continuing residents who have MI or MR and must be referred to the State mental health and mental retardation authorities for annual resident review, the responsibility of issuing notices to residents who do not have MI or MR would likely fall to the NF. We are unwilling to impose such a burden. However, without a notice, it is unclear how applicants and residents can know of the action which was taken concerning them and of their right to appeal that action. We specifically solicit comments on how we might devise a method of notification which works without being unnecessarily burdensome.

Because we believe that all PASARR determinations (both Level I or Level II) are appealable, we would specify in § 483.204 that the State must provide a system for an individual who has been provided any PASARR determination (Level I or Level II) by the State under subpart C of part 483 to appeal that determination. Since the State is required to have a Level I mechanism for identifying individuals or residents with MI or MR (§ 483.128(a)), we consider Level I decisions made by whatever agent(s) the State designates to perform this function to be State actions.

The proposed regulation requires that payment be maintained for services provided under the Medicaid program at least during the 30 day period required for notification of a transfer or discharge under 42 CFR 483.12(a)(4). Thus, even if the State completed the appeals process before the 30 day period concluded, a decision adverse to the patient would not take effect until after the 30 day period. Authorization for payment for services provided under the Medicare program is not provided by these regulations. Thus payment for such services during the course of the appeal

and including the 30 day notification period is available only so far as it is otherwise available under the Medicare program.

The appeals process proposed in these regulations will be used in lieu of other appeals processes available to individuals under Titles XVIII and XIX of the Act with regard to the issues included in the appeal. In this regulation, we propose to make changes in the fair hearing regulations at 42 CFR part 431, subpart E in order to add the appeals required by this regulation and make conforming changes in the regulations governing reconsiderations and appeals under the Medicare program at 42 CFR 405.705.

We recognize that the appeals procedures we propose raise several difficult questions. We are particularly concerned about the application of the process to preadmission screening appeals, and to appeals of the various types of transfers and discharges which are exempt from the 30 day notice requirement. In both these instances, a faster appeals process than provided for here may be appropriate. We are also concerned about the application of these appeals procedures to private pay individuals and to individuals for whom Medicare coverage would not be available for the entire appeals period. We would welcome comments and suggestions regarding any aspects of the process and particularly regarding how we might modify the process to permit expedited consideration of certain types of appeals, as mentioned above.

IV. Revisions to the Regulations

We propose to make the following revisions to the regulations in title 42:

1. In part 431 subpart E, we would revise §§ 431.200, 431.201, 431.206, 431.210, 431.213, 431.220, 431.241, 431.242, 431.246 to reflect appeals provisions, which conform to OBRA '87 requirements.

2. To part 431, we would add new § 431.621, which specifies State Medicaid agency responsibilities with respect to statutory requirements in section 4211(a) of OBRA '87.

3. In part 483, we would add a new subpart C containing §§ 483.100 to 483.138, which specify requirements that must be met by States concerning preadmission screening and annual resident review of mentally ill and mentally retarded individuals.

4. Also in part 483, we would add a new subpart E containing § 483.200, which provides State requirements for appeals of discharges, transfers and PASARR determinations.

5. We would also make conforming changes to the Medicare fair hearings regulations in § 405.705.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble of that rule.

VI. Regulatory Impact Statement

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a final regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospital-based and independent laboratories as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a metropolitan statistical area and has fewer than 50 beds.

These proposed changes primarily would conform the regulations to the legislative provisions of sections 4201(a) (for Medicare) and 4211(a) (for

Medicaid) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203. Certain provisions of this regulation involve discretionary determinations; however, we believe that no significant costs would be associated with them. We have identified the following discretionary provisions that may or may not have the potential for small increases in costs to States and NFs:

- The requirement that State's provide active treatment to residents with dual needs NF and active treatment).

Although we believe that this discretionary provision would result in incremental costs, we believe that the costs would be insignificant because of the limited number of individuals falling into this category. Also, we expect that some FFP will be available to offset costs.

- Requirement that Level I screening be conducted to determine who has MI or MR.

For the reasons mentioned above we are also predicting insignificant costs as a result of this provision.

We believe that these provisions would result in incremental costs, we believe that the costs would be insignificant when compared to the resulting increased quality of care. In that this discussion of costs is not conclusive, we encourage comments and any applicable data concerning these discretionary provisions if there is a perception that they may result in significant increased costs.

For these reasons, we have determined that the threshold criteria of E.O. 12291 would not be met, and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

VII. Information Collection Requirements

Section 4214(d) of OBRA '87 provides a waiver of Office of Management and Budget review for the purpose of implementing the nursing home reform amendments.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

Chapter IV of title 42 would be amended as set forth below:

Subchapter B—Medicare Programs

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as follows:

Subpart G—Reconsiderations and Appeals Under the Hospital Insurance Program

1. The authority citation for part 405 subpart G is revised to read as follows:

Authority: Secs. 1102, 1154, 1155, 1819(c)(2), 1869(b), 1871, 1872 and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1395 (i)–3(c), 1395ff(b), 1395hh, 1395ii and 1395pp).

2. Section 405.705 is amended by revising paragraphs (c) and (d), and adding paragraphs (e) and (f) and the introductory text is republished to read as follows:

§ 405.705 Actions which are not initial determinations.

An initial determination under part A of Medicare does not include determinations relating to:

(c) Whether an individual is qualified for use of the expedited appeals process as provided in § 405.718;

(d) An action regarding compromise of a claim arising under the Medicare program, or termination or suspension of collection action on such a claim under the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953). See 20 CFR 404.515 for overpayment claims against an individual, § 405.374 for overpayment claims against a provider, physician or other supplier, and § 408.110 for claims concerning unpaid Medicare premiums;

(e) The transfer or discharge of residents of skilled nursing facilities in accordance with § 483.12 of this chapter; or

(f) The preadmission screening and annual resident review processes required by part 483 subparts C and E of this chapter.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

B. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for part 431 is amended by adding new § 431.621 to subpart M to read as follows:

Subpart M—Relations With Other Agencies

Sec.

§ 431.621 State requirements with respect to nursing facilities.

Subpart E—Fair Hearings for Applicants and Recipients

3. In subpart E, § 431.200 is revised to read as follows:

§ 431.200 Basis and purpose.

This subpart implements section 1902(a)(3) of the Act, which requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. This subpart also prescribes procedures for an opportunity for hearing if the Medicaid agency takes action to suspend, terminate, or reduce services. This subpart also implements sections 1819(f)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act by providing an appeals process for individuals proposed to be transferred or discharged from skilled nursing facilities and nursing facilities and those adversely affected by the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

4. Section 431.201 is amended by revising the definitions of "action" and "date of action" to read as follows:

§ 431.201 Definitions.

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge patients and determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

5. Section 431.206(c) is revised to read as follows:

§ 431.206 Informing applicants and recipients.

(c) The agency must provide the information required in paragraph (b) of this section—

(1) At the time that the individual applies for Medicaid;

(2) At the time of any action affecting his claim;

(3) At the time a skilled nursing facility or a nursing facility notifies a resident in accordance with § 483.12 of this chapter that he or she is to be transferred or discharged; and

(4) At the time an individual receives an adverse determination by the State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

6. Section 431.210 is amended by revising the undesignated introductory paragraph and paragraph (a) to read as follows:

§ 431.210 Content of notice.

A notice required under § 431.206 (c)(2), (c)(3), or (c)(4) of this subpart must contain—

(a) A statement of what action the State, skilled nursing facility, or nursing facility intends to take;

7. Section 431.213 is amended by revising paragraphs (e) and (f) and adding a new paragraphs (g) and (h) to read as follows:

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

(e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;

(f) A change in the level of medical care is prescribed by the recipient's physician;

(g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or

(h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(4)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(4)(i).

8. Section 431.220(a) is amended by revising paragraph to read as follows:

§ 431.220 When a hearing is required.

(a) The agency must grant an opportunity for a hearing to:

(1) Any applicant who requests it because his claim for services is denied

or is not acted upon with reasonable promptness;

(2) Any recipient who requests it because he believes the agency has taken an action erroneously;

(3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged; and

(4) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.

9. Section 431.241 is revised to read as follows:

§ 431.241 Matters to be considered at the hearing.

The hearing must cover—

(a) Agency action or failure to act with reasonable promptness on a claim for services, including both initial and subsequent decisions regarding eligibility;

(b) Agency decisions regarding changes in the type or amount of services;

(c) A decision by a skilled nursing facility or nursing facility to transfer or discharge a patient; and

(d) A State determination with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

10. Section 431.242 is amended by revising paragraph (a)(2) to read as follows:

§ 431.242 Procedural rights of the applicant or recipient.

(a) . . .

(2) All documents and records to be used by State or local agency or the skilled nursing facility or nursing facility at the hearing;

Subpart M—Relations With Other Agencies

11. Section 431.246 is revised to read as follows:

§ 431.246 Corrective action.

The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility if—

(a) The hearing decision is favorable to the applicant or recipient; or

(b) The agency decides in the applicant's or recipient's favor before the hearing.

12. In subpart M, a new § 431.621 is added, to read as follows:

§ 431.621 State requirements with respect to nursing facilities.

(a) *Basis and purpose.* This section implements sections 3919(b)(3)(F) and 1919(e)(7) of the Act by specifying the terms of the agreement the State must have with the State mental health and mental retardation authorities concerning the operation of the State's preadmission screening and annual resident review (PASARR) program.

(b) *State plan requirement.* The State plan must provide that the Medicaid agency has in effect a written agreement with the State mental health and mental retardation authorities that meets the requirements specified in paragraph (c) of this section.

(c) *Provisions required in an agreement.* The agreement must specify the respective responsibilities of the agency and the State mental health and mental retardation authorities, including arrangements for—

(1) Joint planning between the parties to the agreement;

(2) Access by the agency to the State mental health and mental retardation authorities' records when necessary to carry out the agency's responsibilities;

(3) Recording, reporting, and exchanging medical and social information about individuals subject to PASARR;

(4) Ensuring that preadmission screenings and annual resident reviews are performed timely in accordance with §§ 483.112(c) and 483.114(c) of this part;

(5) Ensuring that, if the State mental health and mental retardation authorities delegate their respective responsibilities, these delegations comply with § 483.106(e) of this part;

(6) Ensuring that PASARR determinations made by the State mental health and mental retardation authorities are not countermanded by the State Medicaid agency but that the State mental health and mental retardation authorities do not use criteria which are inconsistent with those adopted by the State Medicaid agency under its approved State plan;

(7) Designating the independent person or entity who performs the PASARR evaluations for individuals with MI; and

(8) Ensuring that all requirements of §§ 483.100–483.136 are met.

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

C. Part 483 is amended as follows:

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102, 1819 (a)-(f), 1905 (c) and (d), and 1919 (a)-(f) of the Social Security Act (42 U.S.C. 1302, 1395i(3)(a)-(f), 1396d (c) and (d), and 1396r (a)-(f)).

2. The table of contents for part 483 is amended by adding a new subpart C containing §§ 483.100 through 483.138, and new subpart E containing § 483.200 to read as follows:

Sec.

Subpart C—Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals

- 483.100 Basis.
- 483.102 Applicability.
- 483.104 State plan requirement.
- 483.106 Basic rule.
- 483.108 Relationship of PASARR to other Medicaid Processes.
- 483.110 Out-of-State Arrangements.
- 483.112 Preadmission screening of applicants for admission to NFs.
- 483.114 Annual review of NF residents.
- 483.116 Residents and applicants determined to require NF level of services.
- 483.118 Residents and applicants determined not to require NF level of services.
- 483.120 Active treatment.
- 483.122 Availability of FFP for NF services.
- 483.124 Availability of FFP for active treatment.
- 483.126 Appropriate placement.
- 483.128 PASARR evaluation criteria.
- 483.130 PASARR determination criteria.
- 483.132 Evaluating the need for NF services and NF level of care (PASARR/NF).
- 483.134 Evaluating whether an individual with mental illness requires active treatment (PASARR/MI).
- 483.136 Evaluating whether an individual with mental retardation requires active treatment (PASARR/MR).
- 483.138 Maintenance of services and availability of FFP.

Subpart E—Appeals of Discharges, Transfers, and Preadmission Screening and Annual Resident Review (PASARR) Determinations

- 483.200 Basis.
- 483.202 Definitions.
- 483.204 Provision of a hearing and appeal system.
- 483.206 Transfers, discharges and relocations subject to appeal.

3. A new subpart C is added containing §§ 483.100 through 483.138 to read as follows:

§ 483.100 Basis.

The requirements of §§ 483.100 through 483.138 governing the State's responsibility for preadmission screening and annual resident review (PASARR) of individuals with mental illness and mental retardation are based on section 1919(e)(7) of the Act.

§ 483.102 Applicability.

(a) This subpart applies to the screening or reviewing of all individuals and residents with mental illness or mental retardation who apply to or reside in Medicaid certified NFs regardless of the source of payment for the NF services, and regardless of the individual's or resident's known diagnoses.

(b) As used in this subpart—

(1) An individual is considered to have a mental illness (MI) if he or she—

(i) Has a primary or secondary diagnosis of mental disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, Revised; and

(ii) Does not have a primary diagnosis of dementia, including Alzheimer's disease or a related disorder.

(2) An individual is considered to have dementia if he or she—

(i) Has a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, Revised; and

(ii) Does not have mental retardation.

(3) An individual is considered to have mental retardation (MR) if he or she has—

(i) A level of retardation (mild, moderate, severe or profound) described in the "American Association on Mental Deficiency's Manual on Classification in Mental Retardation" (1983); or

(ii) A related condition, as defined by § 435.1009 of this chapter.

§ 483.104 State plan requirement.

As a condition of approval of the State plan, the State must operate a preadmission screening and annual resident review program that meets the requirements of §§ 483.100 through 483.138.

§ 483.106 Basic rule.

(a) The State PASARR program must require—

(1) Preadmission screening of all individuals with mental illness or mental retardation who apply as new admissions to Medicaid NFs on or after January 1, 1989;

(2) Initial review, by April 1, 1990, of all current residents with mental retardation or mental illness who entered Medicaid NFs prior to January 1, 1989; and

(3) At least annual review, as of April 1, 1990, of all residents with mental illness of mental retardation, regardless of whether they were first screened under the preadmission screening or annual resident review requirements.

(b) *New admissions, readmissions, and interfacility transfers.* An individual being—

(1) Admitted to any NF in which he or she has not recently resided and to which he or she cannot qualify as a readmission is a new admission. New admissions are subject to preadmission screening.

(2) Readmitted, following a temporary absence for hospitalization or for therapeutic leave, to a NF in which he or she has resided is not a new admission. Readmissions are subject to annual resident review rather than preadmission screening.

(3) Transferred from one NF to another NF, with or without an intervening hospital stay, is a new admission and is subject to preadmission screening.

(c) *Purpose.* The preadmission screening and annual resident review process must result in determinations, based on a physical and mental evaluation of each individual with mental illness or mental retardation, that are described in §§ 483.112 and 483.114.

(d) *Responsibility for evaluations and determinations.* The PASARR determinations of whether an individual requires the level of services provided by a NF and whether active treatment is needed—

(1) For individuals with mental illness, must be made by the State mental health authority and be based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority; and

(2) For individuals with mental retardation, must be made by the State mental retardation or developmental disabilities authority.

(e) *Delegation of responsibility.* (1) The State mental health and mental retardation authorities may delegate the evaluation and determination functions for which they are responsible (see below) to another entity only if—

(i) The State mental health and mental retardation authorities retain ultimate control and responsibility for the performance of their statutory obligations; and

(ii) The two determinations as to the need for NF services and for active treatment are made, based on a consistent analysis of the data.

(2) The State mental retardation authority has responsibility for both the evaluation and determination functions for individuals with MR whereas the State mental health authority has responsibility only for the determination function.

(3) The evaluation of individuals with MI cannot be delegated by the State mental health authority because it does

not have responsibility for this function. The evaluation function must be performed by a person or entity other than the State mental health authority.

§ 483.108 Relationship of PASARR to other medicaid processes.

(a) PASARR determinations made by the State mental health or mental retardation authorities cannot be countermanded by the State Medicaid agency, either in the claims process or through other utilization control/review processes or by the State survey and certification agency.

(b) In making their determinations, however, the State mental health and mental retardation authorities must not use criteria relating to the need for NF care or active treatment that are inconsistent with this regulation and any supplementary criteria adopted by the State Medicaid agency under its approved State plan.

(c) To the maximum extent practicable, in order to avoid duplicative testing and effort, the PASARR must be coordinated with the routine resident assessments required by § 483.20(b).

§ 483.110 Out-of-State arrangements.

(a) For an individual eligible for Medicaid, the State in which the individual is a legal resident must pay for the PASARR and make the required determinations, in accordance with § 431.52(b)(1).

(b) For individuals not eligible for Medicaid, the State in which the facility is located pays for the PASARR unless the States have mutually agreed to other arrangements.

(c) A State may include arrangements for PASARR in its provider agreements with out-of-State facilities or reciprocal interstate agreements.

§ 483.112 Preadmission screening of applicants for admission to NFs.

(a) For each NF applicant with MI or MR, the State mental health or mental retardation authority (as appropriate) must determine, in accordance with § 483.130, whether, because of the resident's physical and mental condition, the individual requires the level of services provided by a NF.

(b) If the individual with mental illness or mental retardation is determined to require an NF level of care, the State mental health or mental retardation authority (as appropriate) must also determine, in accordance with § 483.130, whether the individual requires active treatment for the mental illness or mental retardation, as defined in § 483.120.

(c) *Timeliness.* A preadmission screening determination must be made

in writing within 7 working days of referral of the individual with MI or MR by whatever agent performs the Level I identification, under § 483.128(a) of this part, to the State mental health or mental retardation authority for screening. (See § 483.128(a) for discussion of Level I).

§ 483.114 Annual review of NF residents.

(a) *Individuals with mental illness.*

For each resident of a NF who has mental illness, the State mental health authority must determine in accordance with § 483.130 whether, because of the resident's physical and mental condition, the resident requires—

- (1) The level of services provided by—
 - (i) A NF;
 - (ii) An inpatient psychiatric hospital for individuals under age 21, as described in section 1905(h) of the Act; or
 - (iii) An institution for mental diseases providing medical assistance to individuals age 65 or older; and
- (2) Active treatment for mental illness, as defined in § 483.120.

(b) *Individuals with mental retardation.* For each resident of a NF who has mental retardation, the State mental retardation or developmental disability authority must determine in accordance with § 483.130 whether, because of his or her physical or mental condition, the resident requires—

- (1) The level of services provided by a NF or an intermediate care facility for the mentally retarded; and
 - (2) Active treatment for mental retardation as defined in § 483.120.
- (c) *Frequency of review.* A review and determination must be conducted for each resident of a Medicaid NF who has mental illness or mental retardation not less often than annually.
- (d) The first set of annual reviews on residents who entered the NF prior to January 1, 1989 must be completed by April 1, 1990.

§ 483.116 Residents and applicants determined to require NF level of services.

(a) If the State mental health or mental retardation authority determines that a resident or applicant for admission to a NF requires an NF level of services, the NF may admit or retain the individual.

(b) If the State mental health or mental retardation authority determines that a resident or applicant for admission requires both an NF level of services and active treatment for the mental illness or mental retardation—

- (1) The NF may admit or retain the individual; and
- (2) The State must provide or arrange for the provision of the active treatment

needed by the individual while he or she resides in the NF.

§ 483.118 Residents and applicants determined not to require NF level of services.

(a) *Applicants who do not require NF services.* If the State mental health or mental retardation authority determines that an applicant for admission to a NF does not require NF services, the applicant cannot be admitted, NF services are not a covered Medicaid service for that individual, and further screening is not required.

(b) *Residents who require neither NF services nor active treatment for MI or MR.* If the State mental health or mental retardation authority determines that a resident requires neither the level of services provided by a NF nor active treatment for MI or MR, regardless of the length of stay in the facility, the State must—

- (1) Arrange for the safe and orderly discharge of the resident from the facility in accordance with § 483.12(a); and
- (2) Prepare and orient the resident for discharge.

(c) *Residents who do not require NF services but require active treatment for MI or MR—*(1) *Long term residents.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, for any resident who has continuously resided in a NF for a least 30 months before the date of the determination, and who requires only active treatment as defined in § 483.120, the State must, in consultation with the resident's family or legal representative and caregivers—

- (i) Provide for, or arrange for the provision of active treatment for the mental illness or mental retardation;
- (ii) Offer the resident the choice of remaining in the facility or of receiving services in an alternative setting;
- (iii) Inform the resident of the institutional and noninstitutional alternatives covered under the State Medicaid plan for the resident; and
- (iv) Clarify the effect on eligibility for Medicaid services under the State plan if the resident chooses to leave the facility, including its effect on readmission to the facility.

(2) *Short term residents.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, for any resident who requires only active treatment, as defined in § 483.120, and who has not continuously resided in a NF for at least 30 months before the date of the determination, the State

must, in consultation with the resident's family or legal representative and caregivers—

(i) Arrange for the safe and orderly discharge of the resident from the facility in accordance with § 483.12(a);

(ii) Prepare and orient the resident for discharge; and

(iii) Provide for, or arrange for the provision of, active treatment for the mental illness or mental retardation.

(3) For the purposes of establishing length of stay in a NF, the 30 months of continuous residence in a NF or longer—

(i) Is calculated back from the date of the annual resident review determination which finds that the individual is not in need of NF level of services;

(ii) May include temporary absences for hospitalization or therapeutic leave; and

(iii) May consist of consecutive residences in more than one NF.

§ 483.120 Active treatment.

(a) *Definition.* (1) For mental illness, active treatment means the continuous and aggressive implementation of an individualized plan of care that—

(i) Is developed under and supervised by a physician in conjunction with an interdisciplinary team of qualified mental health professionals;

(ii) Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel; and

(iii) Is directed toward diagnosing and reducing the resident's psychotic symptoms that necessitated institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the active treatment level of services at the earliest possible time.

(2) For mental retardation; active treatment means treatment which meets the requirements of § 483.440(a)(1).

(b) *What active treatment does not include.* (1) For mental illness, active treatment does not include intermittent or periodic psychiatric services for residents who do not require 24-hour supervision by qualified mental health personnel.

(2) For mental retardation, active treatment does not include the services described in § 483.440(a)(2).

(c) *Who must receive active treatment.* The State must provide or arrange for the provision of active treatment, in accordance with this subpart, to all NF residents with MI or MR whose needs are such that 24-hour

supervision, treatment and training by qualified mental health or mental retardation personnel is necessary, as identified by the screening provided in §§ 483.130 or 483.134 and 483.136.

(d) The NF must provide mental health or mental retardation services which are of a lesser intensity than active treatment to all residents who need such services.

§ 483.122 Availability of FFP for NF services.

(a) Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, FFP is available for NF services provided to a Medicaid eligible individual subject to the requirements of this part only if the individual has been determined—

(1) To need NF care under § 483.116(a) or

(2) Not to need NF services but to need active treatment, meets the requirements of § 483.118(c)(1), and elects to stay in the NF.

(b) FFP for NF services cannot remain available if the Medicaid eligible individual with MI or MR has not been subjected to timely (at least annual) reviews, in accordance with this subpart, to reevaluate NF and active treatment service needs.

§ 483.124 Availability of FFP for active treatment

FFP is not available for active treatment furnished to NF residents as NF services.

§ 483.126 Appropriate Placement

Placement of an individual with MI or MR in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by active treatment services provided by or arranged for by the State.

§ 483.128 PASARR Evaluation criteria.

(a) The State's PASARR program must identify all individuals who are suspected of having MI or MR as defined in § 483.102. This identification function is termed Level I. Level II is the function of evaluating and determining whether NF services and active treatment are needed. The State's performance of the Level I identification function must provide for the issuance of written notice to the individual or resident that he or she is suspected of having MI or MR and is being referred to the State mental health or mental

retardation authority for Level II screening.

(b) Evaluations performed under PASARR must be adapted to the cultural background, language, ethnic origin and means of communication used by the individual being evaluated.

(c) The State's PASARR program must use at least the evaluative criteria of § 483.130 (if one or both determinations can easily be made categorically as described in § 483.130) or of §§ 483.132 and 483.134 or 483.136 (or, in the case of individuals with both MS and MR, §§ 483.132, 483.134 and 483.136 if a more extensive individualized evaluation is required).

(d) In the case of individualized evaluations, information that is necessary for determining whether it is appropriate for the individual with MI or MR to be placed in a NF or in another appropriate setting should be gathered throughout all applicable portions of the PASARR evaluation (§§ 483.132 and 483.134 and/or 483.136). The two determinations relating to the need for NF level of care and active treatment are interrelated and must be based upon a comprehensive analysis of all data concerning the individual.

(e) Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, in the case of individualized evaluations, to supplement and verify the currency and accuracy of existing data, the State's PASARR program may need to gather additional information necessary to assess proper placement and treatment.

(f) For both categorical and individualized determinations, findings of the evaluation must correspond to the person's current functional status as documented in medical and social history records.

(g) For individualized PASARR determinations, findings must be issued in the form of a written evaluative report which—

(1) Identifies the name and professional title of the person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered;

(2) Provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual;

(3) If NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs, including services

required in paragraph (g)(4) of this section:

(4) If active treatment is not recommended, identifies any specific mental retardation or mental health services which are of a lesser intensity than active treatment and are required to meet the evaluated individual's needs;

(5) If active treatment is recommended, identifies the specific mental retardation or mental health services required to meet the evaluated individual's needs; and

(6) Includes the basis for the report's conclusions.

(h) For categorical PASARR determinations, findings must be issued in the form of an abbreviated written evaluative report which—

(1) Identifies the name and professional title of the person applying the categorical determination and the data on which the application was made;

(2) Explains the categorical determination(s) that has (have) been made and, if only one of the two required determinations can be made categorically, describes the nature of any further screening which is required;

(3) Identifies, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed; and

(4) Includes the basis for the report's conclusions.

(i) For both categorical and individualized determinations, findings of the evaluation must be interpreted and explained to the individual or, where applicable, to a legal representative designated under State law and the individual or his or her legal representative must receive a copy of the written evaluative report.

(j) In the case of applicants for NF services, the evaluation report must be submitted within 5 working days by the evaluator to the appropriate State authority so that the appropriate State authority may make the necessary determinations within the timeframe of 7 working days required in § 483.112(c).

(k) The evaluation may be terminated if the evaluator finds at any time during the evaluation that the individual being evaluated—

(1) Does not have MI or MR; or
(2) Has a primary diagnosis of dementia (including Alzheimer's Disease or a related disorder) and does not have a diagnosis of MR or a related condition.

§ 483.130 PASARR determination criteria.

(a) Determinations made by the State mental health or mental retardation authority as to whether NF level of

services and active treatment are needed must be based on an evaluation of data concerning the individual, either as specified in paragraph (b) of this section, or in §§ 483.132 and 483.134 or 483.136 (or, in the case of an individual having both MR and MI, §§ 483.134 and 483.136).

(b) Determinations may be—

(1) Advance group determinations, in accordance with this section, by category that take into account that certain diagnoses or levels of severity of illness clearly indicate that admission to or residence in a NF or the provision of active treatment is or is not normally needed; or

(2) Individualized determinations based on more extensive individualized evaluations as required in §§ 483.132, 483.134, or 483.136 (or, in the case of an individual having both MR and MI, §§ 483.134 and 483.136).

(c) Advance group determinations by category developed by the State mental health or mental retardation authorities may be applied by the NF or other evaluator following Level I review only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the category established by the State authorities (See § 483.132(c)). Sources of existing data on the individual that could form the basis for applying a categorical determination by the State authorities would be hospital records, physician's evaluations, election of hospice status, records of community mental health centers or community mental retardation or developmental disability providers.

(d) Examples of categories for which the State mental health or mental retardation authority may make an advance group determination that NF services are needed are—

(1) Convalescent care from an acute physical illness for which hospitalization was required;

(2) Terminal illness as defined for hospice purposes in § 418.3 of this chapter;

(3) Severe physical illnesses such as coma, ventilator dependence, functioning at a brain stem level, or diagnoses such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in a level of impairment so severe that the individual could not be expected to benefit from active treatment;

(4) Provisional admissions pending further assessment in cases of delirium where an accurate diagnosis cannot be made until the delirium clears;

(5) Very brief and finite stays of up to a fixed number of days to provide respite to in-home caregivers to whom the individual with MI or MR is expected to return following the brief NF stay or in order to permit alternative arrangements for longer term care in emergency situations requiring protective services; and

(6) The State may specify time limits for categorical determinations that NF services are needed and in the case of paragraphs (d) (4) and (5) of this section, must specify a time limit which is appropriate for provisional admissions pending further assessment and for respite care. If an individual is later determined to need a longer stay than the State's limit allows, the individual must be subjected to a new PASARR before continuation of the stay may be permitted and payment made for days of NF care beyond the State's time limit.

(e) The State mental health authority must require the more extensive individualized evaluations for at least each resident or applicant with a diagnosis in any of the following categories to see whether active treatment services for MI are needed:

- (1) Schizophrenia;
- (2) Paranoia;
- (3) Major affective disorders;
- (4) Schizoaffective disorders; and
- (5) Atypical psychosis.

(f) The State mental health authority may devise lists of minor mental disorders (with the exception of MR) which alone normally do not warrant active treatment and should not serve as barriers to admission to or continued residence in a NF.

(g) The State mental health and mental retardation authorities must not make categorical determinations that active treatment is needed without requiring that such a determination be followed by a more extensive individualized evaluation under § 483.134 or § 483.136 to determine the exact nature of the active treatment services that are needed.

(h) The State mental retardation authority must not make categorical determinations that active treatment is not needed for individuals with MR. A determination that an individual with MR does not need active treatment must be based on a more extensive individualized evaluation under § 483.136.

(i) Except for long term residents identified in § 483.118(c)(1), the State mental health or mental retardation authority may make categorical determinations that individuals with certain mental conditions or levels of severity of MI would normally require

active treatment services of such an intensity that an acceptable active treatment program could not be delivered by the State in most, if not all, NFs and that another, more appropriate placement must be utilized.

(j) The State mental health or mental retardation authority may make a categorical determination that certain individuals of advanced years be allowed to decline active treatment in a NF when—

(1) The individuals have already been determined by categorical determination or by a determination based on more extensive individualized evaluation to need NF level of services and also a more extensive individualized evaluation to need active treatment;

(2) The individuals are not a danger to themselves or others;

(3) The decision to let the resident forego active treatment is left open as to a specific age; and

(4) The decision is made on an individual basis by the individual or his or her legal representative.

(k) *Need for determinations in all cases.* Except for dementias, all mental disorders described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, Revised, require determinations, either categorically or individually.

(l) If a State mental health or mental retardation authority determines NF needs by category, it may not waive the active treatment determination. The appropriate State authority must also determine by category that active treatment is not needed, or subject the individual to a more extensive individualized evaluation as specified in § 483.134 or § 483.136.

(m) All determinations made by the State mental health and mental retardation authority, regardless of how they are arrived at, must be recorded in the individual's record.

(n) The evaluated individual and his or her legal representative, where applicable, must be notified in writing of—

(1) Any determinations that have been made under this subpart; and

(2) The rights of the individual to appeal the determinations under subpart E of this part.

(o) Each notice of the determination made by the State mental health or mental retardation authority must include—

(1) Whether a NF level of services is needed;

(2) Whether active treatment is needed; and

(3) The placement options that are available to the individual consistent with these determinations.

(p) Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, the placement options and the required State actions are as follows:

(1) *Can be admitted to a NF.* Any applicant for admission to a NF who has MI or MR and who requires the level of services provided by a NF, regardless of whether active treatment is also needed, may be admitted to a NF, if the placement is appropriate, as determined in § 483.126. If active treatment is also needed, the State is responsible for providing or arranging for the provision of the active treatment services.

(2) *Cannot be admitted to a NF.* Any applicant for admission to a NF who has MI or MR and who does not require the level of services provided by a NF, regardless of whether active treatment is also needed, is inappropriate for NF placement and must not be admitted.

(3) *Can be considered appropriate for continued placement in a NF.* Any NF resident with MI or MR who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for active treatment, can continue to reside in the NF, if the placement is appropriate, as determined in § 483.126.

(4) *May Choose to Remain in the NF even though the placement would otherwise be inappropriate.* Any NF resident with MI or MR who does not require the level of services provided by the NF but does require active treatment and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the State must meet his or her active treatment needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

(5) *Cannot be considered appropriate for continued placement in a NF and must be discharged (Short-term residents).* Any NF resident with MI or MR who does not require the level of services provided by a NF but does require active treatment and who has resided in a NF for less than 30 consecutive months must be discharged in accordance with § 483.12(a) to an appropriate setting where the State must provide active treatment services. The determination notice must provide information of how, when, and by whom the resident will be advised of discharge

arrangements and of his/her appeal rights under both PASARR and discharge provisions.

(6) *Cannot be considered appropriate for continued placement in a NF and must be discharged (short or long-term residents).* Any NF resident with MI or MR who does not require the level of services provided by a NF and does not require active treatment regardless of his or her length of stay, must be discharged in accordance with § 483.12(a). The determination notice must provide information of how, when, and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

(q) If a determination is made to admit or allow to remain in a NF any individual who requires active treatment, the determination must be supported by assurances that the active treatment services that are needed can and will be provided or arranged for by the State while the individual resides in the NF.

(r) The State PASARR system must maintain records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals subjected to PASARR; and

(s) The State PASARR system must establish and maintain a tracking system for all individuals with MI or MR in NFs to ensure that appeals and future reviews are performed in accordance with this subpart and subpart E.

§ 483.132 Evaluating the need for NF services and NF level of care (PASARR/NF).

(a) For each applicant for admission to a NF and each NF resident who has MI or MR, the evaluator must assess whether—

(1) The applicant's or resident's total needs are such that these needs can only be met on an institutional basis; and

(2) The NF is an appropriate institutional setting for meeting those needs in accordance with § 483.126.

(b) In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.

(c) At a minimum the data relied on to make a determination must include:

(1) Evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis);

(2) Evaluation of mental status (for example, diagnoses, date of onset,

medical history, likelihood that the individual may be a danger to himself/herself or others); and

(3) Functional assessment (activities of daily living).

§ 483.134 Evaluating whether an individual with mental illness requires active treatment (PASARR/MI).

(a) *Purpose.* The purpose of this section is to identify the minimum data needs and process requirements for the State mental health authority, which is responsible for determining whether or not the applicant or resident with MI, as defined in § 483.102(b)(1) of this part, needs an active treatment program for mental illness as defined in § 483.120.

(b) *Data.* Minimum data collected must include—

(1) A comprehensive history and physical examination of the person. If the history and physical examination are not performed by a physician, then a physician must review and concur with the conclusions. The following areas must be included (if not previously addressed):

(i) Complete medical history;

(ii) Review of all body systems;

(iii) Specific evaluation of the person's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and

(iv) In case of abnormal findings which are the basis for a NF placement, additional evaluations conducted by appropriate specialists.

(2) A comprehensive drug history including current or immediate past use of medications that could mask symptoms or mimic mental illness.

(3) A psychosocial evaluation of the person, including current living arrangements and medical and support systems. If the psychosocial evaluation is not conducted by a licensed social worker, then a licensed social worker must review and concur with the conclusions.

(4) A comprehensive psychiatric evaluation including a complete psychiatric history, evaluation of intellectual functioning, memory functioning, and orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations. If the psychiatric evaluation is not performed by a physician, then a board-eligible or board-certified psychiatrist must review and concur with the conclusions.

(5) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist

the individual to perform these activities while living in the community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that NF placement is required.

(6) The functional assessment must address the following areas: Self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, or both, self-monitoring of nutritional status, handling money, dressing appropriately, and grooming.

(c) *Data interpretation.* Based on the data compiled, a board-eligible or board-certified psychiatrist must validate the diagnosis of mental illness and determine whether a program of psychiatric active treatment is needed.

§ 483.136 Evaluating whether an individual with mental retardation requires active treatment (PASARR/MR).

(a) *Purpose.* The purpose of this section is to identify the minimum data needs and process requirements for the State mental retardation authority to determine whether or not the applicant or resident with mental retardation, as defined in § 483.102(b)(3) of this part, needs a continuous active treatment program, as defined in §§ 435.1009 and 483.440 of this chapter.

(b) *Data.* Minimum data collected must include the individual's comprehensive history and physical examination results to identify the following information or, in the absence of data, must include information that permits a reviewer specifically to assess:

(1) The individual's medical problems;

(2) The level of impact these problems have on the individual's independent functioning;

(3) All current medications used by the individual and the current response of the individual to any prescribed medications in the following drug groups:

(i) Hypnotics,

(ii) Antipsychotics (neuroleptics),

(iii) Mood stabilizers and antidepressants,

(iv) Antianxiety-sedative agents, and

(v) Anti-Parkinsonian agents.

(4) Self-monitoring of health status;

(5) Self-administering and scheduling of medical treatments;

(6) Self-monitoring of nutritional status;

(7) Self-help development such as toileting, dressing, grooming, and eating;

(8) Sensorimotor development, such as ambulation, positioning, transfer skills, gross motor dexterity, visual motor

perception, fine motor dexterity, eye-hand coordination, and extent to which prosthetic, orthotic, corrective or mechanical supportive devices can improve the individual's functional capacity;

(9) Speech and language (communication) development, such as expressive language (verbal and nonverbal), receptive language (verbal and nonverbal), extent to which non-oral communication systems can improve the individual's function capacity, auditory functioning, and extent to which amplification devices (e.g. hearing aid) or a program of amplification can improve the individual's functional capacity;

(10) Social development, such as interpersonal skills, recreation-leisure skills, and relationships with others;

(11) Academic/educational development, including functional learning skills;

(12) Independent living development such as meal preparation, budgeting and personal finances, survival skills, mobility skills (orientation to the neighborhood, town, city), laundry, housekeeping, shopping, bedmaking, care of clothing, and orientation skills (for individuals with visual impairments);

(13) Vocational development, including present vocational skills;

(14) Affective development such as interests, and skills involved with expressing emotions, making judgments, and making independent decisions; and

(15) The presence of identifiable maladaptive or inappropriate behaviors of the individual based on systematic observation (including, but not limited to, the frequency and intensity of identified maladaptive or inappropriate behaviors).

(c) *Data interpretation.* (1) The State must ensure that a licensed psychologist who meets the qualifications of a qualified mental retardation professional, as defined in § 483.430(a) of this part, identifies the individual's intellectual functioning measurement and validates that the individual has MR or is a person with a related condition.

(2) The State mental retardation authority must review the data described in paragraph (b) of this section and determine whether the person's status compares with each of the following characteristics commonly associated with a need for active treatment:

(i) Inability to—

(A) Take care of most personal care needs;

(B) Understand simple commands;

(C) Communicate basic needs and wants;

(D) Be employed at a productive wage level without systematic long term supervision or support;

(E) Learn new skills without aggressive and consistent training;

(F) Apply skills learned in a training situation to other environments or settings without aggressive and consistent training;

(G) Demonstrate behavior appropriate to the time, situation or place without direct supervision; and

(H) Make decisions requiring informed consent without extreme difficulty;

(ii) Demonstration of severe maladaptive behavior(s) that place the person or others in jeopardy to health and safety; and

(iii) Presence of other skill deficits or specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the person functional skills.

§ 431.138 Maintenance of services and availability of FFP.

(a) *Maintenance of services.* If a NF mails a 30 day notice of its intent to transfer or discharge a resident, under § 483.12(a) of this chapter, the agency may not terminate or reduce services until—

(1) The expiration of the notice period; or

(2) A subpart E appeal, if one has been filed, has been resolved.

(b) *Availability of FFP.* FFP is available for expenditures for services provided to Medicaid recipients during—

(1) The 30 day notice period specified in § 483.12(a) of this chapter; or

(2) During the period an appeal is in progress.

4. A new subpart E is added to read as follows:

Subpart E—Appeals of Discharges, Transfers, and Preadmission Screening and Annual Resident Review (PASARR) Determinations

§ 483.200 Basis.

This subpart implements sections 1819(e)(3), 1819(f)(3), 1919(e)(3), 1919(f)(3), and 1919(c)(7) of the Act.

§ 483.202 Definitions.

For purposes of this subpart and subparts B and C—

Discharge means movement from an entity that participates in Medicare as a skilled nursing facility, a Medicare certified distinct part, an entity that participates in Medicaid as a nursing facility, or a Medicaid certified distinct part to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.

Individual means an individual or any legal representative of the individual.

Resident means a resident of a SNF or NF or any legal representative of the resident.

Transfer means movement from an entity that participates in Medicare as a skilled nursing facility, a Medicare certified distinct part, an entity that participates in Medicaid as a nursing facility or a Medicaid certified distinct part to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility.

§ 483.204 Provision of a hearing and appeal system.

(a) Each State must provide a system for:

(1) A resident of a SNF or a NF to appeal a notice from the SNF or NF of intent to discharge or transfer the resident; and

(2) An individual who has been adversely affected by any PASARR determination (Level I or Level II) made by the State in the context of either a preadmission screening or an annual resident review under subpart C of part 483 to appeal that determination.

(b) The State must provide an appeals system that meets the requirements of this subpart, § 483.12 of this part, and part 431 subpart E of this subchapter.

§ 483.206 Transfers, discharges and relocations subject to appeal.

(a) "Facility" means a certified entity, either a Medicare SNF or a Medicaid NF (See §§ 483.5 and 483.12(a)(1)).

(b) A resident has appeal rights when he or she is transferred from—

(1) A certified bed into a noncertified bed; and

(2) A bed in a certified entity to a bed in an entity which is certified as a different provider.

(c) A resident has no appeal rights when he or she is moved from one bed in the certified entity to another bed in the same certified entity.

Dated: March 14, 1990.

Gail R. Wilensky,
Administrator, Health Care Financing
Administration.

Approved: March 16, 1990.

Louis W. Sullivan,
Secretary.

[FR Doc. 90-6615 Filed 3-20-90; 11:36 am]

BILLING CODE 4120-01-M

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Friday
March 23, 1990

Register

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research

Proposed Funding Priority for Fiscal Years 1990-1991; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

Proposed Funding Priority for Fiscal Years 1990-1991

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for fiscal years 1990-1991.

SUMMARY: The Secretary of Education previously announced final funding priorities for the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1989 and 1990 on April 25, 1989 at 54 FR 17896. Subsequently, the Congress passed the Appropriations Act for the Departments of Labor, Health and Human Services, and Education for 1990. The Conference Report accompanying the appropriations bill stated that "it is the intention of the conferees that NIDRR establish a new research and training center dealing with the needs of low-functioning deaf individuals." This additional proposed priority for 1990 is in response to that congressional intent.

DATES: Interested persons are invited to submit comments or suggestions regarding the proposed priority on or before April 23, 1990.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue SW., Room 3070, Switzer Building, Washington, DC 20202-2601.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research. Telephone: 202-732-1139. Deaf and hearing impaired individuals may call 202-732-1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the Rehabilitation Research and Training Center (RRTC) program of NIDRR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education or to public or private organizations that are affiliated with institutions of higher education. RRTCs conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. RRTCs provide training to undergraduate and graduate students and to practitioners engaged in the provision of rehabilitation services. Each RRTC must conduct an interdisciplinary program of training in

rehabilitation research, including training in research methodology and applied research experience that will contribute to the number of qualified researchers working in the field of rehabilitation research. The Centers are encouraged to develop practical applications for all of their research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing graduate and undergraduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination must be accessible to individuals with a range of disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Priority

Improved Rehabilitation for Low-Functioning Deaf Individuals

The National Center for Health Statistics (NCHS) estimated that there were 21 million Americans with hearing impairments in 1985, and that approximately 700,000 reported that they were limited in their ability to perform their regular activities because of their hearing impairment. (NCHS, "Data From the National Health Survey," Series 10, No. 160, 1987). However, within the general population of deaf and hearing-impaired Americans, there is a subpopulation of individuals with deafness who are profoundly and severely limited in their abilities to learn, work, communicate, or live independently. This group, referred to here as low-functioning deaf individuals, consists primarily of those individuals who have been deaf since birth or childhood; a substantial number of these individuals have other disabilities—such as blindness, autism, cerebral palsy, epilepsy, or mental retardation—that also exacerbate the disabling effect of the hearing impairment.

According to the Commission on the Education of the Deaf (COED), approximately 60 percent of the deaf students who leave school each year, whether as graduates or dropouts, are unable to benefit from higher education and either enter low-skilled jobs or remain unemployed. The COED report also notes that an estimated 100,000 deaf persons are either unemployed or seriously underemployed due to

additional problems, such as deficiencies in language performance and related psychological, vocational, and social underdevelopment. According to this report, this population of low-functioning deaf adults increases annually as about 2,000 deaf persons leave school without entering into further education, training, or employment. (COED, "Toward Equality: Education of the Deaf," 1988.)

Various labels "low-achieving deaf", "non-feasible deaf", "multiply-handicapped hearing-impaired", "hearing-impaired developmentally disabled", and "low-functioning deaf", this population is difficult to identify and assess, and remains underserved. Members of this group tend to have limited formal education; marginal manual and oral communication skills; extremely low levels of reading, writing, and language skills; and very limited employment experience. Without some type of intensive specialized rehabilitative intervention, this group is likely to experience an extremely high rate of unemployment as technological advances further reduce the number and types of jobs that they have traditionally filled.

Further research is needed to improve our understanding of the needs of the low-functioning deaf population; to refine methods of identifying, evaluating, and diagnosing these individuals; to identify and develop effective rehabilitation intervention approaches, programs, and service delivery systems; to build the capacity to serve this population among rehabilitation counselors, educators, and health service workers; to develop relevant data, learning materials and informational media; and to improve the services available for this population, particularly in the areas of diagnosis, independent community living, vocational preparation, communication skills, and psychosocial adjustment.

Any Center to be funded in response to this priority must involve individuals with deafness, including individuals from a diversity of economic and ethnic backgrounds, in all phases of the planning, conduct, and review of Center activities. Any such Center must provide all assessment instruments, program descriptions, training materials, databases, and technical assistance in formats that are accessible to deaf individuals.

An absolute priority is proposed for a Center in this area that will:

—Investigate the causes and rehabilitation-related functional consequences of disabling physical, social, cultural, emotional, behavioral,

- communicative, and cognitive conditions among low-functioning deaf individuals, including individuals with one or more secondary disabilities;
- Identify those services offered to the general population that may be appropriate for low-functioning deaf individuals, identify the major barriers to the use of those services, and develop new and innovative service approaches and modifications to service delivery systems to eliminate those barriers and to enhance the rehabilitation of this population;
 - Identify and demonstrate the effective use of existing rehabilitation assessment techniques and rehabilitation methods with low-functioning deaf individuals, including those with severe secondary disabilities, and develop and test new methods and techniques;
 - Develop research-based models to support families, professionals, and service providers in their efforts to enhance the development, adjustment, rehabilitation, and independence of low-functioning deaf individuals, including those with severe secondary disabilities;
 - Develop and evaluate models of technical assistance to State rehabilitation and State developmental disabilities agencies to improve services and service delivery systems for low-functioning deaf individuals, including those with severe secondary disabilities;
 - Develop and maintain a national database, and serve as a central repository of information on the rehabilitation of low-functioning deaf individuals, including those with severe secondary disabilities;
 - Maintain an interactive relationship with major comprehensive rehabilitation facilities serving low-functioning deaf persons, including those with severe secondary disabilities, on a national or regional basis;
 - Develop effective instructional and media materials, with open captions, to enhance the dissemination of new knowledge in this area to appropriate audiences, including physicians, allied health practitioners, teachers, counselors, consumers, and parents; and
 - Conduct one or more conferences on the state-of-the-art in a significant aspect of rehabilitation of low-functioning deaf individuals, including those with severe secondary disabilities.
- Invitation to comment:* Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3070, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.
- Authority:** 29 U.S.C. 762(b).
(Catalog of Federal Domestic Assistance Number 84.133B, National Institute on Disability and Rehabilitation Research)
- Dated:** February 22, 1990.
- Lauro F. Cavazos,**
Secretary of Education.
- [FR Doc. 90-6629 Filed 3-22-90; 8:45 am]
- BILLING CODE 4000-01-M**

48 Federal Register

Friday
March 23, 1990

Part VII

Department of Transportation

Federal Highway Administration
National Highway Traffic Safety
Administration

23 CFR Part 655
Uniform System for Handicapped Parking;
Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 655

[FHWA Docket No. 89-18]

RIN 2125-AC39

Uniform System for Handicapped Parking

AGENCY: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document invites written comments on establishing a Uniform System for Handicapped Parking. It is the result of Public Law (Pub. L.) 100-641 passed by Congress on November 9, 1988, and has been developed through the regulatory negotiation process. Its purpose is to provide guidelines to States for the establishment of a uniform system for handicapped parking to enhance the safety of persons with disabilities which limit or impair the ability to walk.

DATES: Written, signed comments must be received by May 2, 1990. The FHWA and NHTSA believe that 40 days is sufficient time to comment on the NPRM given the length of the negotiations of the Committee and the Committee's accomplishments.

ADDRESSES: Submit written comments to FHWA Docket No. 89-18, Federal Highway Administration, room 4232, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Harry B. Skinner, FHWA, Office of Traffic Operations (202) 366-2186, Ms. Judith S. Kaleta, FHWA, Office of Chief Counsel (202) 366-0764, or Mr. E. William Fox, NHTSA, Office of Chief Counsel, (202) 366-1834, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 9, 1988, the Congress enacted Public Law 100-641 which authorizes DOT to issue regulations for a uniform

system for handicapped parking and which is the subject of this notice. This authority was delegated to the FHWA and the NHTSA which decided to conduct the rulemaking through regulatory negotiation. Regulatory Negotiation (RN), is a procedure recommended by the Administrative Conference of the United States (Recommendation 82-4, "Procedures for Negotiating Proposed Regulations," 47 FR 30708, June 18, 1982) for handling certain regulatory actions. RN is carried out by an advisory committee created under the Federal Advisory Committee Act, 5 U.S.C. app. 1. The purpose of RN is to have representatives of all affected interests fully discuss the issues under conditions that would provide incentives to narrow or eliminate their differences and to negotiate a proposed rule acceptable to each interest.

Accordingly, a Notice of Intent to form an Advisory Committee for Regulatory Negotiation was published in the *Federal Register* on June 12, 1989. Based on the response to this notice it was determined that an advisory committee on this subject was necessary and in the public interest. The charter for this committee, its membership, and first meeting date were published in the *Federal Register* on October 3, 1989.

The advisory committee met for four sessions—October 18-19, 1989, October 30-November 1, 1989, November 29-December 1, 1989, and January 10-12, 1990. Minutes of these meetings are available in FHWA Docket No. 89-18 located at the Department of Transportation, Room 4232, 400 Seventh Street SW., Washington, DC 20590. The FHWA and the NHTSA have participated fully in the deliberations of the Committee.

The FHWA and the NHTSA have adopted the Committee's recommended rule as this NPRM and it is set forth below with the section numbers of the Code of Federal Regulations which we proposed to add. In addition, we have adopted the rationale for each of the provisions as contained in the Committee report. Rather than repeat these explanations, we have attached the Committee report to the preamble as an Appendix.

Comments received on this NPRM will be reviewed by the Committee to determine whether it should recommend that the proposal be modified. Any necessary changes would be negotiated by the Committee in the same manner as the NPRM, and the Committee will submit a recommended final rule to the FHWA and the NHTSA.

Discussion of Proposal

The purpose of this regulation is to set guidelines for States to use in establishing a uniform system for handicapped parking to enhance the safety of persons with disabilities that limit or impair the ability to walk. States are not precluded from going beyond the threshold requirements specified in this regulation. Nevertheless, we note that the rationale we adopted, as explained in the Appendix to the preamble indicates those sections of the guidelines which are deemed to be minimum requirements, and those which are deemed to be the outside limits for the design and implementation of a safe and effective uniform system for handicapped parking.

This regulation addresses six specific subjects. First, terms necessary to implement the regulation are defined for the purposes of this regulation. The section provides definitions for:

- The International Symbol of Access.
- Persons with disabilities which limit or impair the ability to walk.
- A special license plate.
- A removable windshield placard.

Second, the regulation sets out the conditions under which a State shall issue a special license plate and the fee which can be charged for that plate. Third, the regulation sets out conditions for the issuance and periodic renewal of a removable windshield placard and its use. The regulation covers permanent and temporary placards.

Fourth, the regulation limits the means of identifying a vehicle being used by a person with a disability to the display of a special license plate or removable windshield placard. Fifth, the regulation sets out the limiting conditions for the design and construction of parking spaces reserved for persons with disabilities. Sixth, the regulation requires that States recognize special license plates and removable windshield placards issued by issuing authorities of other States and countries.

Regulatory Impact

The FHWA and NHTSA have determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. Preliminary comments submitted by the States indicate that costs will be minimal if the system is phased in over time. The need to further evaluate economic

consequences will be reviewed on the basis of the comments submitted in response to this notice. For the reasons stated herein and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This proposed rule has Federalism implications affecting the relationship between the States and the Federal Government. It has been assessed in light of the principles, criteria, and requirements as outlined in E.O. 12612.

The States employ various methods to identify vehicles used to transport persons with disabilities, including special license plates and handicapped parking permits. These methods have contributed to the problems that persons with disabilities face whenever they use their cars for interstate travel. For this reason, Congress directed the agencies to determine methods most effective for combatting the problem, through implementation of section 3 of Public Law 100-641.

We have consulted with the States to implement the law. The American Association of Motor Vehicle Administrators, the National Association of Governor's Highway Safety Representatives, and the National Governors Association were members of the Committee. We have examined comments submitted by these organizations and by their members. The costs to the States will be minimal.

This proposed rule is a guideline and is consistent with the statutory mandate. It allows the States the maximum administrative discretion possible in establishing a uniform system.

Environmental Assessment

This rule has also been analyzed for the purposes of the National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Handicapped parking, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Constitution. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing, it is proposed to amend part 655 of chapter I of title 23, Code of Federal Regulations, by adding a new subpart H as set forth following the Report of the Handicapped Parking Regulatory Negotiation Advisory Committee.

Issued on: March 20, 1990.

T.D. Larson,

Administrator, Federal Highway Administration.

Jerry R. Curry,

Administrator, National Highway Traffic Safety Administration.

Appendix—Report of the Handicapped Parking Regulatory Negotiation Advisory Committee

"A Uniform System of Handicapped Parking"



February 1990.

Dedication

R. Dennis Smurr: February 24, 1943–December 7, 1989.

To R. Dennis Smurr, Associate Advocacy Director, Paralyzed Veterans of America, who dreamed of a better parking system for persons with disabilities. Without his enthusiastic and tireless efforts over a period of six years, a section on parking would never have been added to a bill concerning the naming of a Federal building. Without his efforts, this Committee might not have been formed. We are happy to have worked and laughed with him.

Report of the Handicapped Parking Regulatory Negotiation Advisory Committee

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Foreword

Public Law 100-641 directs the Secretary of Transportation to issue regulations which establish a uniform system for handicapped parking and which encourage adoption of the system by the States. This authority has been delegated to the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA). To identify the major issues, gauge the importance to parties, and develop workable regulations, the FHWA and the NHTSA have chartered the Handicapped Parking Regulatory Negotiation Advisory Committee (the Committee) to write a report and a recommended Notice of Proposed Rulemaking (NPRM).

The following organizations were appointed as members of the Committee:

American Association of Motor Vehicle Administrators (AAMVA)
Mr. David H. Hugel
American Public Transit Association (APTA)
Mr. Ronald L. Habegger
Arthritis Foundation
Mr. Robert C. Hollenbach
Dignity for the Disabled, Inc.
Mr. Denny R. Wood
Disabled American Veterans (DAV)
Mr. Ronald W. Drach
Federal Highway Administration
Ms. Judith S. Kaleta
National Association of Governors' Highway Safety Representatives (NAGHSR)
Mr. Dennis R. Atkins
National Committee on Uniform Traffic Laws and Ordinances (NCUTLO)
Mr. Robert Reeder
National Governors' Association (NGA)
Mr. Glenn D. Turner
National Highway Traffic Safety Administration
Mr. Sam E. Luebbert
National Sheriffs' Association (NSA)

Mr. Charles B. Meeks
New York State Office of Advocate for the
Disabled (NYSOAD)
Mr. Robert J. Boehlert
Paralyzed Veterans of America (PVA)
Ms. Alyse Steinborn
United States Architectural and
Transportation Barriers and Compliance
Board (ATBCB)
Ms. Marsha Mazz

AAMVA is an association of State and provincial officials responsible for the administration and enforcement of motor vehicle and traffic laws in the United States and Canada.

APTA is an international organization representing the public transit industry. APTA members include almost 400 bus and rail transit systems which carry over ninety-five percent of those persons using public transit in the United States today. APTA members also include approximately 500 other members who serve the transit industry including government agencies, academic institutions, consulting firms, manufacturers, and other suppliers of services and products to the transit industry in domestic and international markets.

ATBCB was established by section 502 of the Rehabilitation Act of 1973 and has among its functions to promote the elimination of architectural, transportation, communication, and attitudinal barriers affecting persons with disabilities.

The Arthritis Foundation is committed to the issues that affect people with disabilities because arthritis is one of the leading causes of disability. Through its volunteers and staff, the Foundation addresses these concerns on local, state and national levels.

Dignity for the Disabled, Inc., is a Florida based, nonprofit organization composed of twenty-five members representing persons with disabilities.

DAV is a nonprofit organization chartered by Congress with more than 1.1 million members. DAV is the largest organization representing disabled veterans and probably the largest organization of disabled people in the country.

NAGHSR represents the highway safety offices of the States, territories and the District of Columbia. Its goal is to work on behalf of the States to reduce death and morbidity on our nation's highways.

NGA, founded in 1908, is the instrument through which the nation's governors collectively influence the development and implementation of national policy and apply creative leadership to State issues.

NSA represents 2,096 sheriffs in the United States and has 28,000 members.

NCUTLO is an independent, nonprofit association comprised of more than 140 representatives of Federal, State, and local governmental units.

NYSOAD is a cabinet-level agency of New York Government. The Office has not only served as a technical resource to the State legislature and the Department of Motor Vehicles on issues involving special parking privileges for people with disabilities, but has also successfully advocated for the liberalization of New York's statute on reciprocity for out-of-state vehicles accorded special parking privileges.

PVA is a veteran's service organization chartered by Congress and has more than 14,000 members in 33 chapters and 14 subchapters located throughout the United States. For more than 40 years, PVA has been a strong advocate for restoring the rights and opportunities of individuals with physical disabilities.

This report results from a series of meetings, which the Committee held in Washington, DC. The Committee operated by the general consensus of those persons and interests present at the meetings. With the exception of NCUTLO, which was unable to attend, each committee member participated in the deliberations of the committee through appointed representatives and alternates, and drafted provisions for the review of other members. This report is an embodiment of those agreements reached by the Committee.

The purpose of this report is to provide a recommended Notice of Proposed Rulemaking to the FHWA and the NHTSA that sets guidelines for the States in establishing a uniform system for handicapped parking to enhance the safety of persons with disabilities which limit or impair the ability to walk. As such, while the States are not precluded from going beyond the threshold requirements specified in the guidelines, the Committee has indicated in its report those sections of the guidelines which are deemed to be minimum requirements and those which are deemed to be outside limits for the design and implementation of a safe and effective uniform system for handicapped parking.

The recommended rule contained in this report is not a panacea. This rule is only a starting point. It allows the FHWA and the NHTSA to implement Public Law 100-641 without exceeding their statutory authority, and the Committee urges the agencies to issue an NPRM which adopts the Committee's recommendations. The Committee also requests the agencies to make a copy of the NPRM, including this report, available on audiotape, to ensure that

persons needing to review an alternative format have a timely opportunity to comment on the rule.

The Committee encourages all who read this report to do what they can to help eliminate the problems that persons with disabilities face when travelling, from home to the grocery store or across the country.

The Problem

The States employ various methods to identify vehicles used to transport persons with disabilities, including special license plates and handicapped parking permits. These methods have contributed to the problems that persons with disabilities face whenever travelling by car. Persons with disabilities who can validly park in a designated handicapped parking space in their home State are often ticketed by law enforcement personnel outside of their State who do not recognize the designation on the license plate or permit, in spite of reciprocity agreements.

When traveling by airplane, some persons with disabilities must decide whether to park their car in the designated handicapped parking space at the airport of their departure, or to park in other spaces in order to take their permit with them to use in rental cars at their destinations. With only one permit, they cannot do both.

Persons, with license plates and permits which belong to someone else, park in parking spaces reserved for persons with disabilities resulting in a shortage of designated handicapped parking spaces for those persons who truly need them.

Finally, persons who do not have disabilities which limit or impair the ability to walk have been issued license plates and permits which allow them to park in parking spaces reserved for persons with disabilities. This, too, results in a shortage of spaces for those persons who truly need them.

The Federal Statute

To help address the problems that persons with disabilities face when travelling, Congress enacted Public Law 100-641. This statute directs the Secretary of Transportation to establish a uniform system for handicapped parking which enhances the safety of persons with disabilities which limit or impair the ability to walk, and which encourages adoption by the States. The Secretary has delegated this authority to the FHWA and the NHTSA.

The law provides that the uniform system for handicapped parking:

(1) Adopts the International Symbol of Access (ISA) (as adopted by Rehabilitation International in 1969 at its 11th World Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used to transport persons with disabilities which limit or impair the ability to walk;

(2) Provides for the issuance of license plates which display the ISA for vehicles used to transport persons with disabilities which limit or impair the ability to walk, under criteria to be determined by the States;

(3) Provides for the issuance of removable windshield placards, which display the ISA, to persons with disabilities which limit or impair the ability to walk, under criteria to be determined by the States;

(4) Provides that the fees charged for the licensing or registration of a vehicle used to transport persons with disabilities do not exceed the fees charged for licensing or registration of other similar vehicles operated in the State; and

(5) For purposes of easy access parking, recognizes license plates and placards which display the ISA which have been issued by other States and countries.

Purpose

In the Notice of Proposed Rulemaking (NPRM), the FHWA and the NHTSA should address each of the responsibilities assigned by the new law. Therefore, the Committee recommends that the NPRM propose a section that would set forth the purpose of the regulation. This section would state that the purpose of the regulation is to provide guidelines to the States for the establishment of a uniform system for handicapped parking to enhance the safety of persons with disabilities that limit or impair the ability to walk.

Definitions

To clarify each of the terms used in the regulation, the Committee recommends that the NPRM propose a definitional section.

Consistent with the statute, the Committee recommends that the NPRM define "International Symbol of Access" and include the figure in the appendix.

In addition, the NPRM should propose a definition of "persons with disabilities which limit or impair the ability to walk". The Committee believes that a definition is essential to meet the Congressional intent to establish a uniform system and because of the widespread abuse of parking spaces reserved for persons with disabilities. A definition is necessary to give guidance to the States, and to ensure that special license plates and removable windshield placards (traditionally known as handicapped parking permits) are available at least to those individuals with the disabling conditions listed in the definition. Where State systems currently provide for eligibility

of persons with disabling conditions other than those listed in the definition, States are encouraged to review their eligibility criteria against the definition ultimately adopted in the final rule. If necessary, the States should revise their criteria to ensure that eligibility under the State system is extended only to those individuals whose ability to walk safely is limited or impaired.

The Committee carefully reviewed State statutes, the Uniform Vehicle Code, and other sources, for definitions of "disabled", "impaired" and/or "handicapped".

The Committee determined that, with certain modifications, the Louisiana definition of "mobility impaired person", Louisiana Revised Statutes, 47:463.4(E)(1), sets forth a workable guideline for the States and for licensed physicians who certify that a person has a disability which limits or impairs his or her ability to walk. The Committee recommends that the agencies propose this modified definition, found in section 2 of our Uniform System for Handicapped Parking, in the NPRM. Persons with severe disabilities, diseases, or disorders, including emphysema, or arthritic, neurological, or orthopedic conditions which limit or impair the ability to walk, meet the definition and would be entitled to handicapped parking privileges.

The definition also applies to persons who have cardiac conditions to the extent that their functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association. Class III refers to persons with cardiac disease which results in marked limitation of physical activity. These persons are comfortable at rest.

However, less than ordinary physical activity causes fatigue, palpitation, dyspnea, or anginal pain. For example, persons with a Class III cardiac disease are unable to walk one or more level blocks or climb a flight of ordinary stairs. Class IV refers to persons with cardiac disease which results in an inability to carry on any physical activity without discomfort. Symptoms of cardiac insufficiency or of the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.

The Committee discussed whether the definition should include blindness as a disability which limits or impairs a person's ability to walk. The Committee recognized that the definition of "disabled", "handicapped", or "mobility impaired" in several States includes persons with visual impairments. In addition, the Committee reviewed a resolution passed by the National

Federation of the Blind (NFB). The resolution, Resolution 85-22, finds that blindness, in and of itself, is not a mobility impairment and that the problems blind persons face with respect to mobility cannot be remedied by making parking spaces reserved for persons with disabilities available to them. Furthermore, the resolution states that the NFB opposes the use of parking spaces reserved for persons with disabilities by blind persons who do not truly need them.

For the reasons set forth in the NFB resolution, the Committee recommends that the definition contained in the NPRM should not propose to include blindness as a disability which limits or impairs the ability to walk.

The Committee also considered whether age, in itself, should be part of the definition of persons with disabilities which limit or impair the ability to walk. The Committee determined that neither infancy nor old age is a disability, disease, or disorder. Age, in and of itself, is not a mobility impairment, and, therefore, should not be the sole factor to consider in determining whether a person has a disability which limits or impairs the ability to walk.

The Committee intends the definition of "persons with disabilities which limit or impair the ability to walk" to be a minimum guideline. Some States currently make special license plates and removable windshield placards available to people with disabling conditions other than those listed in the proposed definition. The States are not precluded from including people with other disabilities within the scope of eligibility for special license plates and removable windshield placards. State systems would fail to comply with the proposed minimum guideline only when the criteria for the issuance of special license plates or removable windshield placards precludes issuance to people with disabilities which limit or impair their ability to walk who meet the proposed definition in section 2(b).

The Committee also discussed whether to recommend a definition of a "temporary disability". The Committee believes that if a physician determines that the individual's condition is expected to improve within six months, the condition should be considered temporary. Therefore, the Committee determined that a definition of temporary disability is not warranted, because applicants must still meet the definition of persons with disabilities which limit or impair the ability to walk.

The Committee recommends that the NPRM include a definition of "special

license plate". The Committee has used that phrase to refer to a license plate that displays the ISA. This is consistent with Public Law 100-641 which states that the ISA shall be the only recognized symbol for the identification of vehicles used to transport persons with disabilities which limit or impair the ability to walk. The Committee recommends that the definition state that the ISA be in a color that contrasts to the background of the plate and in the same size as the letters and/or numbers on the plate. The Committee believes that this definition helps to distinguish these license plates from other plates that are issued, and ensures uniformity that will aid law enforcement. The Committee's research indicates that only a few States currently do not issue license plates which display the ISA. Therefore, this requirement should result in only minimal financial burdens to the States.

The Committee also recommends that "removable windshield placards" be defined in the NPRM.

As required by Public Law 100-641, the Committee recommends that "removable windshield placard" be defined to require that the ISA be displayed on the placard.

To enable enforcement personnel to identify valid placards at a distance, the Committee has determined that "removable windshield placard" be defined so as to require that the placard is configured in a way that will enable persons to suspend the placard from the front windshield rearview mirror. For similar reasons, The Committee determined that the ISA should be three inches in height, centered on the placard, blue or white on a contrasting blue or white background. In addition, the Committee recommends that the placard should contain an identification number that could enable law enforcement personnel to determine to whom the placard has been issued by contacting the issuing authority.

The Committee also considered other elements that should be incorporated into a removable windshield placard. To discourage persons from using an expired placard, the Committee recommends that "removable windshield placard" be defined to include an expiration date. The State system should determine the length of time for which the placard would be valid.

Furthermore, the Committee recommends that the definition state that the placard include the seal or other identification of the issuing authority. This recommendation is made by the Committee as an attempt to deter the use of counterfeit placards. The

Committee believes that this benefit would outweigh any potential cost to the issuing authorities for including their seal or identification.

To enable enforcement personnel to more easily identify valid placards, the Committee recommends that the ISA, the expiration date, the identification number, and the seal or other identification of the issuing authority, be on both sides of the removable windshield placard.

To assist the States in designing removable windshield placards that meet the requirement of the rule, the Committee recommends that the agencies include, as an appendix to their NPRM, a sample placard. A sample placard is included as Appendix A to the recommended NPRM set forth in this report.

The Committee recognizes that some States and other issuing authorities currently issue placards that contain additional information. For example, some placards include the name and address of the person to whom the placard is issued. Other placards state that fraudulent use of the placard may result in fines and/or the withdrawal of the placard from the holder.

Furthermore, other placards include information about where a vehicle displaying the placard may be parked. The Committee deems the definition of removable windshield placard to be a minimum threshold. Issuing authorities are not precluded from including additional information on the removable windshield placards, but are cautioned against including identifying information, e.g., name and address, which could infringe on the safety and privacy of persons with disabilities.

Special License Plates

Public Law 100-641 states that a uniform system for handicapped parking is one which provides for the issuance of license plates displaying the ISA for vehicles used to transport persons with disabilities which limit or impair the ability to walk. The Committee recommends that the NPRM propose a section on special license plates. The Committee recommends that this section propose to require the States to issue special license plates for a vehicle which is registered in the name of a person with a disability which limits or impairs the ability to walk, upon the application of these persons. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the section 2(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of special license plates

shall not preclude the issuance of a removable windshield placard.

In addition, the Committee recommends that this section propose to require the States to issue special license plates for a vehicle which is registered in the name of a person when a household member has a disability which limits or impairs his or her ability to walk. The application shall be accompanied by the certification of a licensed physician that the member of the applicant's household meets the section 2(b) definition. To avoid abuse, the number or sets of special license plates issued to an applicant shall not exceed the number of household members who meet the section 2(b) definition.

Furthermore, the Committee recommends that this section propose to require the States to issue special license plates for a vehicle which is registered in the name of an organization. The organization shall be required to certify, under criteria to be determined by the States, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. To curb abuse, the Committee considered whether to limit the issuance of special license plates only to vehicles which are registered in the names of persons with disabilities which limit or impair the ability to walk. However, Public Law 100-641 states that a uniform system for handicapped parking provides for the issuance of special license plates for vehicles which will be used to transport persons with disabilities. The Committee decided to adopt recommendations which are consistent with the statute.

Public Law 100-641 also states that a uniform system for handicapped parking is one that provides that the fees charged for the licensing or registering of the vehicle used to transport persons with disabilities do not exceed fees charged for licensing or registration of other similar vehicles operated in the State. The Committee has determined that "licensing" and "registration", for purposes of this rulemaking, mean the issuance of license plates. Therefore, the Committee recommends that in the section on special license plates, the FHWA and the NHTSA propose a requirement that the fees charged for the issuance of a special license plate shall not exceed the fees charged for a license plate for the same class vehicle. The Committee notes that if a State issues a vanity license plate that also displays the ISA, this requirement would allow the State to charge the applicant at the rate set for other vanity plates.

Finally, the Committee recommends that in the section on special license plates, the FHWA and the NHTSA propose to require that the issuance of special license plates shall not preclude the issuance of one removable windshield placard. The Committee believes that one placard is sufficient to provide easy access. A person who has chosen to obtain special license plates for his or her own car would still be able to travel in another car using the one placard. The Committee deems this requirement to be an outside limit. Issuing more than one placard when a person already has special license plates could result in abuse.

Removable Windshield Placards

As noted above Public Law 100-641 states that a uniform system for handicapped parking provides for the issuance of removable windshield placards. Therefore, the Committee recommends that the NPRM include a section of this subject.

The NPRM should propose to require that each State system provide for the issuance of removable windshield placards upon application of a person with a disability which limits or impairs the ability to walk. In addition, the Committee recommends that the NPRM propose to require that each State mandate the issuing authorities to issue one additional placard to applicants who do not have special license plates, upon the request of the applicant for an additional placard. While the Committee recognizes that the issuance of a placard could increase the potential for abuse, the Committee believes that the benefit outweighs this concern. The issuance of a removable windshield placard in addition to special license plates addresses the problem persons with disabilities face when travelling by airplane or rail and parking in a parking space reserved for persons with disabilities at the airport or train station. They would have an additional placard to use at their destination. The Committee believes that one additional placard is sufficient to provide easy access to persons with disabilities which limit or impair the ability to walk, and deems this requirement to be an outside limit. Issuing more than one additional placard could result in abuse.

The Committee also recommends that each State system requires that the removable windshield placard be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities. (The Committee notes that placards are to be

displayed only when the vehicle is parked, and recognizes that an object hanging from the rearview mirror when the vehicle is in motion creates a safety hazard.) When a vehicle does not have a rearview mirror, the Committee recommends that the placard be displayed on the dashboard.

Currently, States that issue placards usually require that the placards be displayed on the dashboard. Furthermore, some persons with disabilities which limit or impair the ability to walk may also be unable to hang the placard from the rearview mirror. Nevertheless, based on discussions with representatives of the law enforcement community, the Committee believes that the requirement that placards be hung from the rearview mirror would help enforcement personnel to easily recognize whether a vehicle is legally parked, and would result in better enforcement. Preliminary comments submitted by the States to committee members indicate that any costs to the States in revising their placards would be minimal, if phased in over time. The Committee also believes that the burdens placed upon persons with limited hand movement and reach could be minimized if the issuing authorities carefully consider the design and manufacture of the placards. For example, a placard made of cardboard (approximately 15 points) could be manipulated more easily than a placard made of typing paper (20 pound bond).

The Committee considered whether the State system should require the installation of a device from which to hang the placard. However, the Committee believes that this would be burdensome to persons utilizing placards, especially if traveling in a vehicle which they do not own. Furthermore, the Committee believes that since the number of vehicles which lack rearview mirrors is minimal, enforcement would not be impeded.

In addition, the Committee recommends that the NPRM should propose that the State system provide for the periodic renewal of removable windshield placards. The Committee believes that this requirement will eliminate potential abuse by family members and others who continue to utilize the placard after the death of the person with a disability to whom the placard was issued. However, the Committee cautions the States against a renewal system that places a burden on applicants for placards that is substantially greater than that placed upon persons with disabilities which limit or impair the ability to walk who opt for special license plates.

Temporary Removable Windshield Placards

The Committee recommends that the NPRM propose to require that the State system provide for the issuance of temporary placards, for a period not to exceed six months. By limiting eligibility, this provision would ensure that parking spaces reserved for persons with disabilities are available only to those persons who truly need them.

The Committee recommends that the NPRM propose to require that the applicant submit a certification by a licensed physician that he or she is a person with a disability which limits or impairs the ability to walk as defined in the regulation. The certification shall also include the period of time that the physician determines the person will have the disability, not to exceed six months.

In recommending the establishment of a maximum validation period of six months, the Committee did not intend to preclude a person whose disability extends beyond that period, but is nevertheless temporary, from subsequently applying for another temporary placard. These persons are required to submit a new application and certification for the placard in accordance with section 5.

In order, to distinguish between temporary and other placards, for enforcement purposes, the Committee recommends that the word "TEMPORARY" be overprinted on these placards.

Although it may be helpful to require that persons who have been issued temporary placards return them to the issuing authority upon expiration, the Committee believes that this may be unduly burdensome to issuing authorities who would then need to monitor the return of the placards and take action if the placards were not returned. In addition, a provision that required the return of the placards could also be burdensome on the persons to whom they were issued. Therefore, the Committee does not recommend a provision that would address the return of expired placards. Nevertheless, the Committee encourages issuing authorities to determine whether the use of expired placards is a problem within their jurisdiction and take appropriate action to control the unauthorized use of expired placards.

Parking

Public Law 100-641 states that a uniform system for handicapped parking adopts the ISA as the only recognized symbol for the identification of vehicles

used to transport persons with disabilities which limit or impair the ability to walk. Consistent with this provision, the Committee recommends that the NPRM propose that special license plates and removable windshield placards be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities. This does not prohibit the States from using the designations "HP" (Handicapped Person), "DP" (Disabled Person), or "DV" (Disabled Veteran), in addition to the ISA.

Parking Space Design and Construction

Consistent with the Congressional mandate that a uniform system for handicapped parking should enhance the safety of persons with disabilities, the Committee recommends that the NPRM issued by the FHWA and the NHTSA contain a section concerning parking space design and construction. The Committee recommends that the NPRM propose to require that the States establish design and construction standards that ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk. In addition, the NPRM should propose to require that these standards also ensure the safety of persons with disabilities who use these spaces and their accompanying accessible routes. To allow the States maximum administrative discretion, the Committee recommends that the NPRM propose that these standards be set under criteria to be determined by the States. However, in keeping with our goal of uniformity, the Committee encourages the States to follow the Uniform Federal Accessibility Standards (UFAS), which are uniform standards for the design, construction, and alteration of buildings and facilities so that persons with disabilities will have ready access to them. UFAS requires that accessible parking spaces shall be at least 96 inches (8 feet) wide and shall have an adjacent access aisle 60 inches (5 feet) wide minimum. The Committee notes that the design, construction, alteration, and lease of buildings and facilities for which Federal funds participate under the Architectural Barrier Act, Public Law 90-480, must meet UFAS.

Reciprocity

Public Law 100-641 states that a uniform system for handicapped parking recognizes licenses and placards displaying the ISA which have been issued by other States and countries. Consistent with this provision, the

Committee recommends that the NPRM propose a section on reciprocity. This recommendation is made by the Committee to ensure that States, cities, counties, municipalities, and independent parking authorities recognize all special license plates and removable windshield placards that are issued.

Recommended Notice of Proposed Rulemaking

For the foregoing reasons, the Committee recommends that the FHWA and the NHTSA issue an NPRM which reads as follows:

Uniform System for Handicapped Parking

Section 1—Purpose

The purpose of this regulation is to provide guidelines to States for the establishment of a uniform system for handicapped parking to enhance the safety of persons with disabilities which limit or impair the ability to walk.

Section 2—Definitions

Terms used in this part are defined as follows:

(a) *International Symbol of Access* means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(b) *Persons with disabilities which limit or impair the ability to walk* means persons who, as determined by a licensed physician:

(1) Cannot walk two hundred feet without stopping to rest;

(2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;

(3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(4) Use portable oxygen;

(5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

(c) *Special license plate* means a license plate that displays the International Symbol of Access:

(1) In a color that contrasts to the background, and

(2) In the same size as the letters and/or numbers on the plate.

(d) *Removable windshield placard* means a two-sided, hooked placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is blue or white on a contrasting blue or white background;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

Section 3—Special License Plates

(a) Upon application of a person with a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the section 2(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of a special license plate shall not preclude the issuance of a removable windshield placard.

(b) Upon application of a person, when a household member has a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the household member meets the section 2(b) definition of persons with the disabilities which limit or impair the ability to walk. The number or set of special license plates issued shall not exceed the number of household members that meet the section 2(b) definition.

(c) Upon application of an organization, each State shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. The application shall include a certification by the applicant, under criteria to be determined by the State, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk.

(d) The fee of the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

Section 4—Removable Windshield Placards

(a) The State system shall provide for the issuance and periodic renewal of a renewable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority shall, upon request, issue one additional placard to applicants who do not have special license plates.

(b) The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the section 2(b) definition of persons with disabilities which limit or impair the ability to walk.

(c) The State system shall require that the removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

Section 5—Temporary Removable Windshield Placards

(a) The State system shall provide for the issuance of a temporary removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. These placards

shall have the word "TEMPORARY" overprinted on the placard. The State system shall require that the issuing authority issue, upon request, one additional temporary removable windshield placard to applicants.

(b) The State system shall require that the application shall be accompanied by the certification of a licensed physician that the applicant meets the section 2(b) definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(c) The State system shall require that the temporary removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

(d) The State system shall require that the temporary removable windshield placard shall be valid for a period of time not to exceed six months from the date of issuance.

Section 6—Parking

Special license plates or removable windshield placards displaying the International Symbol of Access shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

Section 7—Parking Space Design and Construction

(a) Each State shall establish design and construction standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State. These standards shall:

(1) Ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk; and

(2) Ensure the safety of persons with disabilities which limit or impair the ability to work who use these spaces and their accompanying accessible routes.

(b) The design, construction, alteration, and lease of parking spaces reserved for persons with disabilities for which Federal funds participate must meet the Uniform Federal Accessibility Standards.

Section 8—Reciprocity

The State system shall recognize removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

Appendix A

The following is a sample removable windshield placard:



COLORS
SYMBOL & LEGEND — WHITE
BACKGROUND — BLUE

Appendix B

The Report of the Handicapped Parking Regulatory Negotiation Advisory Committee reads as follows:

[Note: The text of Appendix B is the report of the Handicapped Parking Regulatory Negotiation Advisory Committee]

Implementation

The Committee strongly urges the States to begin implementation of a uniform system for handicapped parking upon the issuance of a final rule by the FHWA and the NHTSA. The Committee recognizes that legislative sessions and budgetary constraints may prohibit

some States from immediately implementing all the provisions of the final rule. While the Committee does not expect all States to issue conforming licensing plates and placards immediately, the Committee asks the States to move in that direction. The Committee recommends that the States review State statutes and/or regulations to determine if legislative or regulatory action is required, and take action to ensure the adoption of new laws and regulations. In addition, the Committee encourages the States to consider the design and manufacture of removable windshield placards.

Education and Outreach Program

The Committee believes that the FHWA and the NHTSA, the States, enforcement organizations and persons with disabilities, need to conduct an aggressive education and outreach effort to alert the public of the need for the availability of parking spaces reserved for persons with disabilities. The following groups should be targeted as part of this program: (1) The general public; (2) persons with disabilities; (3) municipal officials; (4) civic and business organizations; (5) legislators; and (6) law enforcement.

The general public needs to be made aware of the reasons for parking spaces reserved for persons with disabilities. They need to realize the safety risks and burdens they place on persons with disabilities when they merely "use the space to run into the store." To deter abuse of parking spaces reserved for persons with disabilities, the general public must believe that they will be ticketed and penalized for their actions.

Persons with disabilities need to be made aware of Public Law 100-641 and the regulation promulgated by the FHWA and the NHTSA. Because of the safety hazard that could result if they drive with the placard hanging from the rearview mirror, persons with disabilities must be informed that the removable windshield placard is only required to be displayed when the vehicle is parked. In addition, they need to be made aware that the parking spaces reserved for persons with disabilities are designed for their use, to allow easy access when driving their own vehicle or when they are transported by someone else. Parking spaces reserved for persons with disabilities should not be used by family members or others when they are not accompanied by the person with a disability. The Committee firmly believes that the disability community must police itself to prevent abuse to the maximum extent possible.

Municipal officials responsible for the designation of on-street parking places must be made aware of the need for the establishment of adequate spaces to allow persons with disabilities which limit or impair the ability to walk to participate in activities in the community.

Business and civic organizations, whose members are responsible for the designation of off-street parking places in shopping centers, parking garages and lots, business establishments, places of employment, and other private properties should be made aware of the economic and tax benefits and other incentives which can result when their

establishments are made more accessible to, and usable by, persons with disabilities which limit or impair the ability to walk. Furthermore, business and civic organizations must be made aware that accessibility is not limited to the provision of spaces, but includes the removal of impediments to accessible routes, such as garbage canisters and snow piles at curb cuts.

State and local legislators should be made aware of the need to review State and local legislation to address Public Law 100-641, the regulation promulgated by the FHWA and the NHTSA, and other issues raised in this report.

Law enforcement needs to be made aware of the extent of its obligation to enforce parking violations. Law enforcement must adopt policies to encourage personnel to ticket violators of parking spaces reserved for persons with disabilities. Judges and others responsible for the adjudication of parking violations should be made aware of the need for stringent application of appropriate penalties. In addition, law enforcement and adjudicatory personnel should be trained in the State system and reciprocity agreements.

Supplemental Recommendations

During the discussions of the Committee, many issues were raised that are important to a better handicapped parking system, but that do not specifically fall within the scope of Pub. L. 100-641 or the authority of the FHWA and the NHTSA. Nevertheless, in good conscience, the Committee could not ignore these issues. Therefore, the Committee encourages States to adopt legislation or regulations or otherwise change their procedures to ensure the integrity of a uniform handicapped parking system.

The Committee believes that a uniform system for handicapped parking can be enhanced by State systems that utilize a central authority as the only issuing authority for both special license plates and removable windshield placards. This could assist law enforcement in combatting abuse by providing a system to allow them to quickly determine to whom the placard or plate is issued if the central authority also establishes a computerized data base. A data base will also assist inventory control.

The Committee believes that a uniform system for handicapped parking would also be enhanced by allowing persons with disabilities equal access to parking. Disabilities which limit or impair the ability to walk prevent persons from safely getting from one

point to another as quickly and as efficiently as persons without such disabilities, and actually may prevent a person from conducting a transaction in the time allotted on a parking meter. Furthermore, some persons with disabilities are unable to reach the parking meters. Others have limited hand movement and cannot insert the coins and/or otherwise operate the meter. The Committee strongly urges the States to ensure equal access to parking. States should undertake an evaluation of the feasibility of adopting a system of parking for persons with disabilities which would permit them to park in metered spaces, which have not been designated as parking spaces reserved for persons with disabilities, without cost and without time limits. The Committee notes that some jurisdictions currently have this type of system. States should also consider technological advancements in metered parking that would ensure equal access. In addition, the Committee urges the States to permit the designation of reserved parking spaces for persons with disabilities on the roadway in front of their homes.

A uniform system for handicapped parking could also be enhanced by stronger enforcement. The Committee encourages the States to adopt fines or penalties which are not less than the fines or penalties for other serious parking violations. Fines or penalties established for violations of parking spaces reserved for persons with disabilities should consider that these fines and penalties are part of an overall system of enforcement of all parking violations. The Committee also encourages the States to adopt section 11-1003(a) (k) of the Uniform Vehicle Code which makes handicapped parking violations enforceable on private property used by the public. The Committee also encourages the allocation of additional resources for enforcement and/or the exploration of alternatives to traditional law enforcement programs established in a number of States and localities. The Committee believes that such action would discourage persons from illegally parking in parking spaces reserved for persons with disabilities.

Finally, the Committee believes that a uniform system for handicapped parking can be enhanced by penalties for false or fraudulent statements on applications and renewals. The Committee is concerned that physicians might sometimes certify a person's eligibility for special license plates and removable windshield placards without the

opportunity to review the criteria adopted by the issuing authority. In addition, the Committee is concerned that some individuals falsify their own applications.

Conclusion

The Handicapped Parking Regulatory Negotiation Advisory Committee has taken its charge seriously. Members of the Committee did not always agree, but always attempted to understand each other's interests and concerns. The Committee worked diligently to present the FHWA and the NHTSA with a recommended NPRM that implements Public Law 100-641 in a manner that helps to alleviate the problems that persons with disabilities face in travelling, without imposing unnecessary burdens. When appropriate, the Committee has given the States wide latitude in establishing a system that meets the guidelines. For example, the Committee believes that the States should be permitted to exercise administrative discretion in determining the size, renewal period, and fees for removable windshield placards. Therefore, the Committee urges the FHWA and the NHTSA to issue an NPRM that adopts the recommended NPRM, entitled Uniform System for Handicapped Parking, and to publish this report in the Federal Register as appendix B to that NPRM so that persons commenting on the proposed rule will fully understand the problems that persons with disabilities face and the rationale for the recommendations of the Committee.

Finally, the Committee urges the States, the enforcement community, and all who read this report to implement the recommendations to alleviate the problems that persons with disabilities face when travelling by car.

Text of the Proposed Amendment

The FHWA proposes to amend 23 CFR part 655 as follows:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 is revised to read as set forth below:

Authority: Pub. L. 100-641, 102 Stat. 3335(1988); 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

2. Part 655 is amended by adding a new subpart H to read as follows:

Subpart H—Uniform System for Handicapped Parking

Sec.
655.801 Purpose.
655.802 Definitions.
655.803 Special license plates.

Sec.
655.804 Removable windshield placards.
655.805 Temporary removable windshield placards.
655.806 Parking.
655.807 Parking space design and construction.
655.808 Reciprocity.
Appendix Sample windshield placard.

Subpart H—Uniform System for Handicapped Parking

§ 655.801 Purpose.

The purpose of this regulation is to provide guidelines to States for the establishment of a uniform system for handicapped parking to enhance the safety of persons with disabilities which limit or impair the ability to walk.

§ 655.802 Definitions.

Terms used in this subpart are defined as follows:

(a) *International Symbol of Access* means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(b) *Persons with disabilities which limit or impair the ability to walk* means persons who, as determined by a licensed physician:

- (1) Cannot walk two hundred feet without stopping to rest; or
- (2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or
- (3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or
- (4) Use portable oxygen; or
- (5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III of Class IV according to standards set by the American Heart Association; or
- (6) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

(c) *Special license plate* means a license plate that displays the International Symbol of Access

- (1) In a color that contrasts to the background, and
- (2) In the same size as the letters and/or numbers on the plate.

(d) *Removable windshield placard* means a two-sided, hooked placard which includes on each side

- (1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is

blue or white on a contrasting blue or white background;

- (2) An identification number;
- (3) A date of expiration; and
- (4) The seal or other identification of the issuing authority.

§ 655.803 Special license plates.

(a) Upon application of the person with a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of a special license plate shall not preclude the issuance of a removable windshield placard.

(b) Upon application of a person, when a household member has a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the household member meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk. The number or set of special license plates issued shall not exceed the number of household members that meet § 655.802(b).

(c) Upon application of an organization, each State shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. The application shall include a certification by the applicant, under criteria to be determined by the State, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk.

(d) The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

§ 655.804 Removable windshield placards.

(a) The State system shall provide for the issuance and periodic renewal of a removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority shall, upon request, issue one additional placard to applicants who do not have special license plates.

(b) The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk.

(c) The State system shall require that the removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

§ 655.805 Temporary removable windshield placards.

(a) The State system shall provide for the issuance of a temporary removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. These placards shall have the word "TEMPORARY" overprinted on the placard. The State system shall require that the issuing authority issue, upon request, one additional temporary removable windshield placard to applicants.

(b) The State system shall require that the application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed 6 months.

(c) The State system shall require that the temporary removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

(d) The State system shall require that the temporary removable windshield

placard shall be valid for a period of time not to exceed six months from the date of issuance.

§ 655.806 Parking.

Special license plates or removable windshield placards displaying the International Symbol of Access shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

§ 655.807 Parking space design and construction.

(a) Each State shall establish design and construction standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State. These standards shall:

(1) Ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk; and

(2) Ensure the safety of persons with disabilities which limit or impair the ability to walk who use these spaces and their accompanying accessible routes.

(b) The design, construction, alteration, and lease of parking spaces reserved for persons with disabilities for which Federal funds participate must meet the Uniform Federal Accessibility Standards.

§ 655.808 Reciprocity.

The State system shall recognize removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

Appendix to 23 CFR Part 655, Subpart H Sample Windshield Placard



[FR Doc. 90-6693 Filed 3-22-90; 8:45 am]
BILLING CODE 4910-22-M

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Friday, March 23, 1990

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S.J. Res. 243/Pub. L. 101-256

To designate March 25, 1990, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy". (Mar. 20, 1990; 104 Stat. 116; 1 page) Price: \$1.00

H.R. 2749/Pub. L. 101-257

To authorize the conveyance of a parcel of land in Whitney Lake, Texas. (Mar. 20, 1990; 104 Stat. 117; 1 page) Price: \$1.00

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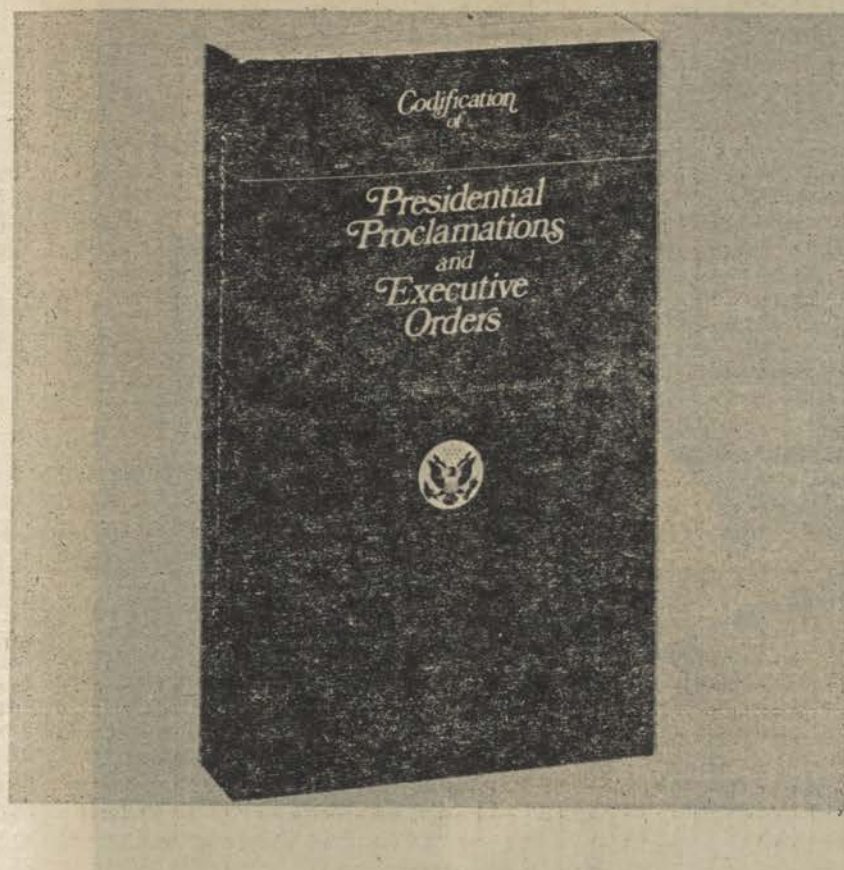
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